

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 Sections 14-1 and 14-3 as follows:

6 (720 ILCS 5/14-1) (from Ch. 38, par. 14-1)
7 Sec. 14-1. Definition.

8 (a) Eavesdropping device.

9 An eavesdropping device is any device capable of being used
10 to hear or record oral conversation or intercept, retain, or
11 transcribe electronic communications whether such conversation
12 or electronic communication is conducted in person, by
13 telephone, or by any other means; Provided, however, that this
14 definition shall not include devices used for the restoration
15 of the deaf or hard-of-hearing to normal or partial hearing.

16 (b) Eavesdropper.

17 An eavesdropper is any person, including law enforcement
18 officers, who is a principal, as defined in this Article, or
19 who operates or participates in the operation of any
20 eavesdropping device contrary to the provisions of this
21 Article.

22 (c) Principal.

23 A principal is any person who:

1 (1) Knowingly employs another who illegally uses an
2 eavesdropping device in the course of such employment; or

3 (2) Knowingly derives any benefit or information from
4 the illegal use of an eavesdropping device by another; or

5 (3) Directs another to use an eavesdropping device
6 illegally on his behalf.

7 (d) Conversation.

8 For the purposes of this Article, the term conversation
9 means any oral communication between 2 or more persons
10 regardless of whether one or more of the parties intended their
11 communication to be of a private nature under circumstances
12 justifying that expectation.

13 (e) Electronic communication.

14 For purposes of this Article, the term electronic
15 communication means any transfer of signs, signals, writing,
16 images, sounds, data, or intelligence of any nature transmitted
17 in whole or part by a wire, radio, pager, computer,
18 electromagnetic, photo electronic or photo optical system,
19 where the sending and receiving parties intend the electronic
20 communication to be private and the interception, recording, or
21 transcription of the electronic communication is accomplished
22 by a device in a surreptitious manner contrary to the
23 provisions of this Article. Electronic communication does not
24 include any communication from a tracking device.

25 (f) Bait car.

26 For purposes of this Article, the term bait car means any

1 motor vehicle that is not occupied by a law enforcement officer
2 and is used by a law enforcement agency to deter, detect,
3 identify, and assist in the apprehension of an auto theft
4 suspect in the act of stealing a motor vehicle.

5 (Source: P.A. 91-657, eff. 1-1-00.)

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

1 services, fire fighting agencies, any public utility,
2 emergency repair facility, civilian defense establishment or
3 military installation;

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

6 (f) Recording or listening with the aid of any device to
7 incoming telephone calls of phone lines publicly listed or
8 advertised as consumer "hotlines" by manufacturers or
9 retailers of food and drug products. Such recordings must be
10 destroyed, erased or turned over to local law enforcement
11 authorities within 24 hours from the time of such recording and
12 shall not be otherwise disseminated. Failure on the part of the
13 individual or business operating any such recording or
14 listening device to comply with the requirements of this
15 subsection shall eliminate any civil or criminal immunity
16 conferred upon that individual or business by the operation of
17 this Section;

18 (g) With prior notification to the State's Attorney of the
19 county in which it is to occur, recording or listening with the
20 aid of any device to any conversation where a law enforcement
21 officer, or any person acting at the direction of law
22 enforcement, is a party to the conversation and has consented
23 to it being intercepted or recorded under circumstances where
24 the use of the device is necessary for the protection of the
25 law enforcement officer or any person acting at the direction
26 of law enforcement, in the course of an investigation of a

1 forcible felony, a felony violation of the Illinois Controlled
2 Substances Act, a felony violation of the Cannabis Control Act,
3 a felony violation of the Methamphetamine Control and Community
4 Protection Act, or any "streetgang related" or "gang-related"
5 felony as those terms are defined in the Illinois Streetgang
6 Terrorism Omnibus Prevention Act. Any recording or evidence
7 derived as the result of this exemption shall be inadmissible
8 in any proceeding, criminal, civil or administrative, except
9 (i) where a party to the conversation suffers great bodily
10 injury or is killed during such conversation, or (ii) when used
11 as direct impeachment of a witness concerning matters contained
12 in the interception or recording. The Director of the
13 Department of State Police shall issue regulations as are
14 necessary concerning the use of devices, retention of tape
15 recordings, and reports regarding their use;

16 (g-5) With approval of the State's Attorney of the county
17 in which it is to occur, recording or listening with the aid of
18 any device to any conversation where a law enforcement officer,
19 or any person acting at the direction of law enforcement, is a
20 party to the conversation and has consented to it being
21 intercepted or recorded in the course of an investigation of
22 any offense defined in Article 29D of this Code. In all such
23 cases, an application for an order approving the previous or
24 continuing use of an eavesdropping device must be made within
25 48 hours of the commencement of such use. In the absence of
26 such an order, or upon its denial, any continuing use shall

1 immediately terminate. The Director of State Police shall issue
2 rules as are necessary concerning the use of devices, retention
3 of tape recordings, and reports regarding their use.

4 Any recording or evidence obtained or derived in the course
5 of an investigation of any offense defined in Article 29D of
6 this Code shall, upon motion of the State's Attorney or
7 Attorney General prosecuting any violation of Article 29D, be
8 reviewed in camera with notice to all parties present by the
9 court presiding over the criminal case, and, if ruled by the
10 court to be relevant and otherwise admissible, it shall be
11 admissible at the trial of the criminal case.

12 This subsection (g-5) is inoperative on and after January
13 1, 2005. No conversations recorded or monitored pursuant to
14 this subsection (g-5) shall be inadmissible in a court of law
15 by virtue of the repeal of this subsection (g-5) on January 1,
16 2005;

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

21 (i) Recording of a conversation made by or at the request
22 of a person, not a law enforcement officer or agent of a law
23 enforcement officer, who is a party to the conversation, under
24 reasonable suspicion that another party to the conversation is
25 committing, is about to commit, or has committed a criminal
26 offense against the person or a member of his or her immediate

1 household, and there is reason to believe that evidence of the
2 criminal offense may be obtained by the recording;

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

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

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

22 No communication or conversation or any part, portion, or
23 aspect of the communication or conversation made, acquired, or
24 obtained, directly or indirectly, under this exemption (j), may
25 be, directly or indirectly, furnished to any law enforcement
26 officer, agency, or official for any purpose or used in any

1 inquiry or investigation, or used, directly or indirectly, in
2 any administrative, judicial, or other proceeding, or divulged
3 to any third party.

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

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

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

25 For the purposes of this subsection (j), "telephone
26 solicitation" means a communication through the use of a

1 telephone by live operators:

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

3 (ii) receiving orders for the sale of goods or
4 services;

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

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

8 For the purposes of this subsection (j), "marketing or
9 opinion research" means a marketing or opinion research
10 interview conducted by a live telephone interviewer engaged by
11 a corporation or other business entity whose principal business
12 is the design, conduct, and analysis of polls and surveys
13 measuring the opinions, attitudes, and responses of
14 respondents toward products and services, or social or
15 political issues, or both;

16 (k) Electronic recordings, including but not limited to, a
17 motion picture, videotape, digital, or other visual or audio
18 recording, made of a custodial interrogation of an individual
19 at a police station or other place of detention by a law
20 enforcement officer under Section 5-401.5 of the Juvenile Court
21 Act of 1987 or Section 103-2.1 of the Code of Criminal
22 Procedure of 1963; ~~and~~

23 (l) Recording the interview or statement of any person when
24 the person knows that the interview is being conducted by a law
25 enforcement officer or prosecutor and the interview takes place
26 at a police station that is currently participating in the

1 Custodial Interview Pilot Program established under the
2 Illinois Criminal Justice Information Act; ~~and~~.

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

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