



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2136

Introduced 2/14/2008, by Sen. John J. Millner

SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-3

Amends the Criminal Code of 1961. Exempts from an eavesdropping violation, with prior notification to and verbal approval of the State's Attorney or his or her designee of the county in which the conversation is anticipated to occur, 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 a law enforcement officer, 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 Substance Act, a felony violation of the Cannabis Control Act, or a felony violation of the Methamphetamine Control and Community Protection Act. Provides that whenever any wire, electronic, or oral communication has been intercepted as a result of this exception that is not related to felony violations of the Illinois Controlled Substance Act, felony violations of the Cannabis Control Act, or felony violations of the Methamphetamine Control and Community Protection Act and conspiracies related thereto, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of this State, or a political subdivision thereof if the disclosure of that information would be in violation of the Eavesdropping Article of the Code unless the violation involves a forcible felony. Provides that the Director of the State Police shall issue rules as are necessary concerning the use of devices, retention of recording media, and reports regarding their use.

LRB095 19493 RLC 45789 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)

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

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

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

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

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

22 (d) Recording or listening with the aid of any device to
23 any emergency communication made in the normal course of

1 operations by any federal, state or local law enforcement
2 agency or institutions dealing in emergency services,
3 including, but not limited to, hospitals, clinics, ambulance
4 services, fire fighting agencies, any public utility,
5 emergency repair facility, civilian defense establishment or
6 military installation;

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

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

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

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

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

1 continuing use of an eavesdropping device must be made within
2 48 hours of the commencement of such use. In the absence of
3 such an order, or upon its denial, any continuing use shall
4 immediately terminate. The Director of State Police shall issue
5 rules as are necessary concerning the use of devices, retention
6 of tape recordings, and reports regarding their use.

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

15 This subsection (g-5) is inoperative on and after January
16 1, 2005. No conversations recorded or monitored pursuant to
17 this subsection (g-5) shall be inadmissible in a court of law
18 by virtue of the repeal of this subsection (g-5) on January 1,
19 2005;

20 (g-6) With approval of the State's Attorney of the county
21 in which it is to occur, recording or listening with the aid of
22 any device to any conversation where a law enforcement officer,
23 or any person acting at the direction of law enforcement, is a
24 party to the conversation and has consented to it being
25 intercepted or recorded in the course of an investigation of
26 child pornography. In all such cases, an application for an

1 order approving the previous or continuing use of an
2 eavesdropping device must be made within 48 hours of the
3 commencement of such use. In the absence of such an order, or
4 upon its denial, any continuing use shall immediately
5 terminate. The Director of State Police shall issue rules as
6 are necessary concerning the use of devices, retention of
7 recordings, and reports regarding their use. Any recording or
8 evidence obtained or derived in the course of an investigation
9 of child pornography shall, upon motion of the State's Attorney
10 or Attorney General prosecuting any case involving child
11 pornography, be reviewed in camera with notice to all parties
12 present by the court presiding over the criminal case, and, if
13 ruled by the court to be relevant and otherwise admissible, it
14 shall be admissible at the trial of the criminal case. Absent
15 such a ruling, any such recording or evidence shall not be
16 admissible at the trial of the criminal case;

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;

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) An electronic recording, including but not limited to,
4 a motion picture, videotape, digital, or other visual or audio
5 recording, made of the interior of a school bus while the
6 school bus is being used in the transportation of students to
7 and from school and school-sponsored activities, when the
8 school board has adopted a policy authorizing such recording,
9 notice of such recording policy is included in student
10 handbooks and other documents including the policies of the
11 school, notice of the policy regarding recording is provided to
12 parents of students, and notice of such recording is clearly
13 posted on the door of and inside the school bus.

14 Recordings made pursuant to this subsection (m) shall be
15 confidential records and may only be used by school officials
16 (or their designees) and law enforcement personnel for
17 investigations, school disciplinary actions and hearings,
18 proceedings under the Juvenile Court Act of 1987, and criminal
19 prosecutions, related to incidents occurring in or around the
20 school bus; ~~and~~

21 (n) ~~(m)~~ Recording or listening to an audio transmission
22 from a microphone placed by a person under the authority of a
23 law enforcement agency inside a bait car surveillance vehicle
24 while simultaneously capturing a photographic or video image; ~~and~~
25 and ~~and~~

26 (o) With prior notification to and verbal approval of the

1 State's Attorney or his or her designee of the county in which
2 the conversation is anticipated to occur, recording or
3 listening with the aid of an eavesdropping device to a
4 conversation in which a law enforcement officer, or any person
5 acting at the direction of a law enforcement officer, is a
6 party to an undercover conversation and has consented to the
7 conversation being intercepted or recorded in the course of an
8 investigation of a felony violation of the Illinois Controlled
9 Substance Act, a felony violation of the Cannabis Control Act,
10 or a felony violation of the Methamphetamine Control and
11 Community Protection Act. Whenever any wire, electronic, or
12 oral communication has been intercepted as a result of this
13 exception that is not related to felony violations of the
14 Illinois Controlled Substance Act, felony violations of the
15 Cannabis Control Act, or felony violations of the
16 Methamphetamine Control and Community Protection Act and
17 conspiracies related thereto, no part of the contents of the
18 communication and no evidence derived therefrom may be received
19 in evidence in any trial, hearing, or other proceeding in or
20 before any court, grand jury, department, officer, agency,
21 regulatory body, legislative committee, or other authority of
22 this State, or a political subdivision thereof if the
23 disclosure of that information would be in violation of this
24 Article unless the violation involves a forcible felony. The
25 Director of the State Police shall issue rules as are necessary
26 concerning the use of devices, retention of recording media,

1 and reports regarding their use.

2 (Source: P.A. 94-556, eff. 9-11-05; 95-258, eff. 1-1-08;

3 95-352, eff. 8-23-07; 95-463, eff. 6-1-08; revised 11-19-07.)