



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB3958

Introduced 2/26/2009, by Rep. Jim Sacia

SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-3

Amends the Criminal Code of 1961. Exempts from an eavesdropping violation recording of a conversation made by or at the request of a person, not a law enforcement officer or agent of a law enforcement officer, who is a party to the conversation, under reasonable suspicion that another party to the conversation is committing, is about to commit, or has committed a criminal offense which is a violation of any provision of the Official Misconduct, Deception Relating to Certification of Disadvantaged Business Enterprises, or Public Contracts Article of the Code and there is reason to believe that evidence of the criminal offense may be obtained by the recording. Effective immediately.

LRB096 08940 RLC 19078 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 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

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

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

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

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

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

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

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

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

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

19 (g-6) 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 child pornography. In all such cases, an application for an
26 order approving the previous or continuing use of an

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

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

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

1 criminal offense may be obtained by the recording;

2 (i-5) 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 which is a violation of any provision of Article 33,
8 Article 33C, or Article 33E of this Code and there is reason to
9 believe that evidence of the criminal offense may be obtained
10 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;

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; and

3 (n) 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. 94-556, eff. 9-11-05; 95-258, eff. 1-1-08;
8 95-352, eff. 8-23-07; 95-463, eff. 6-1-08; 95-876, eff.
9 8-21-08.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.