

# SB2026



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB2026

Introduced 2/20/2009, by Sen. John J. Millner

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-3

Amends the Criminal Code of 1961. Exempts from an eavesdropping violation, any law enforcement officer investigating incidents involving hostages or barricaded subjects necessitating the use of eavesdropping cameras or audio devices intended to ensure the safety of the general public or any law enforcement officer.

SRS096 00010 JEJ 10010 b

A BILL FOR

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

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

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

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

1 any administrative, judicial, or other proceeding, or divulged  
2 to any third party.

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

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

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

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



- 1           (i) soliciting the sale of goods or services;
- 2           (ii) receiving orders for the sale of goods or
- 3           services;
- 4           (iii) assisting in the use of goods or services; or
- 5           (iv) engaging in the solicitation, administration, or
- 6           collection of bank or retail credit accounts.

7           For the purposes of this subsection (j), "marketing or

8           opinion research" means a marketing or opinion research

9           interview conducted by a live telephone interviewer engaged by

10          a corporation or other business entity whose principal business

11          is the design, conduct, and analysis of polls and surveys

12          measuring the opinions, attitudes, and responses of

13          respondents toward products and services, or social or

14          political issues, or both;

15          (k) Electronic recordings, including but not limited to, a

16          motion picture, videotape, digital, or other visual or audio

17          recording, made of a custodial interrogation of an individual

18          at a police station or other place of detention by a law

19          enforcement officer under Section 5-401.5 of the Juvenile Court

20          Act of 1987 or Section 103-2.1 of the Code of Criminal

21          Procedure of 1963;

22          (l) Recording the interview or statement of any person when

23          the person knows that the interview is being conducted by a law

24          enforcement officer or prosecutor and the interview takes place

25          at a police station that is currently participating in the

26          Custodial Interview Pilot Program established under the

1 Illinois Criminal Justice Information Act;

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

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

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

24 (o) Any law enforcement officer investigating incidents  
25 involving hostages or barricaded subjects, necessitating the  
26 use of eavesdropping cameras or audio devices, intended to

1 ensure the safety of the general public or any law enforcement  
2 officer.

3 (Source: P.A. 94-556, eff. 9-11-05; 95-258, eff. 1-1-08;  
4 95-352, eff. 8-23-07; 95-463, eff. 6-1-08; 95-876, eff.  
5 8-21-08.)