



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB2066

Introduced 2/5/2019, by Rep. Patrick Windhorst

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-3

Amends the Criminal Code of 2012. Extends from January 1, 2020 to January 1, 2022, the date of the inoperability of the eavesdropping exemption that provides with prior request to and written or verbal approval of the State's Attorney 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 the conversation and has consented to the conversation being intercepted or recorded in the course of an investigation of a qualified offense as defined in the exemption. Effective immediately.

LRB101 09241 SLF 54335 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 2012 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 electronic  
10 communications, and television communications of any sort  
11 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 offense of involuntary servitude,  
5 involuntary sexual servitude of a minor, or trafficking in  
6 persons under Section 10-9 of this Code, an offense involving  
7 prostitution, solicitation of a sexual act, or pandering, a  
8 felony violation of the Illinois Controlled Substances Act, a  
9 felony violation of the Cannabis Control Act, a felony  
10 violation of the Methamphetamine Control and Community  
11 Protection Act, any "streetgang related" or "gang-related"  
12 felony as those terms are defined in the Illinois Streetgang  
13 Terrorism Omnibus Prevention Act, or any felony offense  
14 involving any weapon listed in paragraphs (1) through (11) of  
15 subsection (a) of Section 24-1 of this Code. Any recording or  
16 evidence derived as the result of this exemption shall be  
17 inadmissible in any proceeding, criminal, civil or  
18 administrative, except (i) where a party to the conversation  
19 suffers great bodily injury or is killed during such  
20 conversation, or (ii) when used as direct impeachment of a  
21 witness concerning matters contained in the interception or  
22 recording. The Director of the Department of State Police shall  
23 issue regulations as are necessary concerning the use of  
24 devices, retention of tape recordings, and reports regarding  
25 their use;

26 (g-5) (Blank);

1 (g-6) 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 child pornography, aggravated child pornography, indecent  
8 solicitation of a child, luring of a minor, sexual exploitation  
9 of a child, aggravated criminal sexual abuse in which the  
10 victim of the offense was at the time of the commission of the  
11 offense under 18 years of age, or criminal sexual abuse by  
12 force or threat of force in which the victim of the offense was  
13 at the time of the commission of the offense under 18 years of  
14 age. In all such cases, an application for an order approving  
15 the previous or continuing use of an eavesdropping device must  
16 be made within 48 hours of the commencement of such use. In the  
17 absence of such an order, or upon its denial, any continuing  
18 use shall immediately terminate. The Director of State Police  
19 shall issue rules as are necessary concerning the use of  
20 devices, retention of recordings, and reports regarding their  
21 use. Any recording or evidence obtained or derived in the  
22 course of an investigation of child pornography, aggravated  
23 child pornography, indecent solicitation of a child, luring of  
24 a minor, sexual exploitation of a child, aggravated criminal  
25 sexual abuse in which the victim of the offense was at the time  
26 of the commission of the offense under 18 years of age, or

1 criminal sexual abuse by force or threat of force in which the  
2 victim of the offense was at the time of the commission of the  
3 offense under 18 years of age shall, upon motion of the State's  
4 Attorney or Attorney General prosecuting any case involving  
5 child pornography, aggravated child pornography, indecent  
6 solicitation of a child, luring of a minor, sexual exploitation  
7 of a child, aggravated criminal sexual abuse in which the  
8 victim of the offense was at the time of the commission of the  
9 offense under 18 years of age, or criminal sexual abuse by  
10 force or threat of force in which the victim of the offense was  
11 at the time of the commission of the offense under 18 years of  
12 age be reviewed in camera with notice to all parties present by  
13 the court presiding over the criminal case, and, if ruled by  
14 the court to be relevant and otherwise admissible, it shall be  
15 admissible at the trial of the criminal case. Absent such a  
16 ruling, any such recording or evidence shall not be admissible  
17 at the trial of the criminal case;

18 (h) Recordings made simultaneously with the use of an  
19 in-car video camera recording of an oral conversation between a  
20 uniformed peace officer, who has identified his or her office,  
21 and a person in the presence of the peace officer whenever (i)  
22 an officer assigned a patrol vehicle is conducting an  
23 enforcement stop; or (ii) patrol vehicle emergency lights are  
24 activated or would otherwise be activated if not for the need  
25 to conceal the presence of law enforcement.

26 For the purposes of this subsection (h), "enforcement stop"

1 means an action by a law enforcement officer in relation to  
2 enforcement and investigation duties, including but not  
3 limited to, traffic stops, pedestrian stops, abandoned vehicle  
4 contacts, motorist assists, commercial motor vehicle stops,  
5 roadside safety checks, requests for identification, or  
6 responses to requests for emergency assistance;

7 (h-5) Recordings of utterances made by a person while in  
8 the presence of a uniformed peace officer and while an occupant  
9 of a police vehicle including, but not limited to, (i)  
10 recordings made simultaneously with the use of an in-car video  
11 camera and (ii) recordings made in the presence of the peace  
12 officer utilizing video or audio systems, or both, authorized  
13 by the law enforcement agency;

14 (h-10) Recordings made simultaneously with a video camera  
15 recording during the use of a taser or similar weapon or device  
16 by a peace officer if the weapon or device is equipped with  
17 such camera;

18 (h-15) Recordings made under subsection (h), (h-5), or  
19 (h-10) shall be retained by the law enforcement agency that  
20 employs the peace officer who made the recordings for a storage  
21 period of 90 days, unless the recordings are made as a part of  
22 an arrest or the recordings are deemed evidence in any  
23 criminal, civil, or administrative proceeding and then the  
24 recordings must only be destroyed upon a final disposition and  
25 an order from the court. Under no circumstances shall any  
26 recording be altered or erased prior to the expiration of the

1 designated storage period. Upon completion of the storage  
2 period, the recording medium may be erased and reissued for  
3 operational use;

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

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

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



1           (ii) the monitoring is used with the consent of at  
2           least one person who is an active party to the marketing or  
3           opinion research conversation or telephone solicitation  
4           conversation being monitored.

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

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

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

1 employment. The notice shall include prominent signage  
2 notification within the workplace.

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

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

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

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

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

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

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

25 (k) Electronic recordings, including but not limited to, a  
26 motion picture, videotape, digital, or other visual or audio

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

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

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

23 Recordings made pursuant to this subsection (m) shall be  
24 confidential records and may only be used by school officials  
25 (or their designees) and law enforcement personnel for  
26 investigations, school disciplinary actions and hearings,

1 proceedings under the Juvenile Court Act of 1987, and criminal  
2 prosecutions, related to incidents occurring in or around the  
3 school bus;

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

8 (o) The use of an eavesdropping camera or audio device  
9 during an ongoing hostage or barricade situation by a law  
10 enforcement officer or individual acting on behalf of a law  
11 enforcement officer when the use of such device is necessary to  
12 protect the safety of the general public, hostages, or law  
13 enforcement officers or anyone acting on their behalf;

14 (p) Recording or listening with the aid of any device to  
15 incoming telephone calls of phone lines publicly listed or  
16 advertised as the "CPS Violence Prevention Hotline", but only  
17 where the notice of recording is given at the beginning of each  
18 call as required by Section 34-21.8 of the School Code. The  
19 recordings may be retained only by the Chicago Police  
20 Department or other law enforcement authorities, and shall not  
21 be otherwise retained or disseminated;

22 (q) (1) With prior request to and written or verbal approval  
23 of the State's Attorney of the county in which the conversation  
24 is anticipated to occur, recording or listening with the aid of  
25 an eavesdropping device to a conversation in which a law  
26 enforcement officer, or any person acting at the direction of a

1 law enforcement officer, is a party to the conversation and has  
2 consented to the conversation being intercepted or recorded in  
3 the course of an investigation of a qualified offense. The  
4 State's Attorney may grant this approval only after determining  
5 that reasonable cause exists to believe that inculpatory  
6 conversations concerning a qualified offense will occur with a  
7 specified individual or individuals within a designated period  
8 of time.

9 (2) Request for approval. To invoke the exception contained  
10 in this subsection (q), a law enforcement officer shall make a  
11 request for approval to the appropriate State's Attorney. The  
12 request may be written or verbal; however, a written  
13 memorialization of the request must be made by the State's  
14 Attorney. This request for approval shall include whatever  
15 information is deemed necessary by the State's Attorney but  
16 shall include, at a minimum, the following information about  
17 each specified individual whom the law enforcement officer  
18 believes will commit a qualified offense:

19 (A) his or her full or partial name, nickname or alias;

20 (B) a physical description; or

21 (C) failing either (A) or (B) of this paragraph (2),  
22 any other supporting information known to the law  
23 enforcement officer at the time of the request that gives  
24 rise to reasonable cause to believe that the specified  
25 individual will participate in an inculpatory conversation  
26 concerning a qualified offense.

1           (3) Limitations on approval. Each written approval by the  
2 State's Attorney under this subsection (q) shall be limited to:

3           (A) a recording or interception conducted by a  
4 specified law enforcement officer or person acting at the  
5 direction of a law enforcement officer;

6           (B) recording or intercepting conversations with the  
7 individuals specified in the request for approval,  
8 provided that the verbal approval shall be deemed to  
9 include the recording or intercepting of conversations  
10 with other individuals, unknown to the law enforcement  
11 officer at the time of the request for approval, who are  
12 acting in conjunction with or as co-conspirators with the  
13 individuals specified in the request for approval in the  
14 commission of a qualified offense;

15           (C) a reasonable period of time but in no event longer  
16 than 24 consecutive hours;

17           (D) the written request for approval, if applicable, or  
18 the written memorialization must be filed, along with the  
19 written approval, with the circuit clerk of the  
20 jurisdiction on the next business day following the  
21 expiration of the authorized period of time, and shall be  
22 subject to review by the Chief Judge or his or her designee  
23 as deemed appropriate by the court.

24           (3.5) The written memorialization of the request for  
25 approval and the written approval by the State's Attorney may  
26 be in any format, including via facsimile, email, or otherwise,

1 so long as it is capable of being filed with the circuit clerk.

2 (3.10) Beginning March 1, 2015, each State's Attorney shall  
3 annually submit a report to the General Assembly disclosing:

4 (A) the number of requests for each qualified offense  
5 for approval under this subsection; and

6 (B) the number of approvals for each qualified offense  
7 given by the State's Attorney.

8 (4) Admissibility of evidence. No part of the contents of  
9 any wire, electronic, or oral communication that has been  
10 recorded or intercepted as a result of this exception may be  
11 received in evidence in any trial, hearing, or other proceeding  
12 in or before any court, grand jury, department, officer,  
13 agency, regulatory body, legislative committee, or other  
14 authority of this State, or a political subdivision of the  
15 State, other than in a prosecution of:

16 (A) the qualified offense for which approval was given  
17 to record or intercept a conversation under this subsection  
18 (q);

19 (B) a forcible felony committed directly in the course  
20 of the investigation of the qualified offense for which  
21 approval was given to record or intercept a conversation  
22 under this subsection (q); or

23 (C) any other forcible felony committed while the  
24 recording or interception was approved in accordance with  
25 this subsection (q), but for this specific category of  
26 prosecutions, only if the law enforcement officer or person

1 acting at the direction of a law enforcement officer who  
2 has consented to the conversation being intercepted or  
3 recorded suffers great bodily injury or is killed during  
4 the commission of the charged forcible felony.

5 (5) Compliance with the provisions of this subsection is a  
6 prerequisite to the admissibility in evidence of any part of  
7 the contents of any wire, electronic or oral communication that  
8 has been intercepted as a result of this exception, but nothing  
9 in this subsection shall be deemed to prevent a court from  
10 otherwise excluding the evidence on any other ground recognized  
11 by State or federal law, nor shall anything in this subsection  
12 be deemed to prevent a court from independently reviewing the  
13 admissibility of the evidence for compliance with the Fourth  
14 Amendment to the U.S. Constitution or with Article I, Section 6  
15 of the Illinois Constitution.

16 (6) Use of recordings or intercepts unrelated to qualified  
17 offenses. Whenever any private conversation or private  
18 electronic communication has been recorded or intercepted as a  
19 result of this exception that is not related to an offense for  
20 which the recording or intercept is admissible under paragraph  
21 (4) of this subsection (q), no part of the contents of the  
22 communication and evidence derived from the communication may  
23 be received in evidence in any trial, hearing, or other  
24 proceeding in or before any court, grand jury, department,  
25 officer, agency, regulatory body, legislative committee, or  
26 other authority of this State, or a political subdivision of



1 the State, nor may it be publicly disclosed in any way.

2 (6.5) The Department of State Police shall adopt rules as  
3 are necessary concerning the use of devices, retention of  
4 recordings, and reports regarding their use under this  
5 subsection (q).

6 (7) Definitions. For the purposes of this subsection (q)  
7 only:

8 "Forcible felony" includes and is limited to those  
9 offenses contained in Section 2-8 of the Criminal Code of  
10 1961 as of the effective date of this amendatory Act of the  
11 97th General Assembly, and only as those offenses have been  
12 defined by law or judicial interpretation as of that date.

13 "Qualified offense" means and is limited to:

14 (A) a felony violation of the Cannabis Control Act,  
15 the Illinois Controlled Substances Act, or the  
16 Methamphetamine Control and Community Protection Act,  
17 except for violations of:

18 (i) Section 4 of the Cannabis Control Act;

19 (ii) Section 402 of the Illinois Controlled  
20 Substances Act; and

21 (iii) Section 60 of the Methamphetamine  
22 Control and Community Protection Act; and

23 (B) first degree murder, solicitation of murder  
24 for hire, predatory criminal sexual assault of a child,  
25 criminal sexual assault, aggravated criminal sexual  
26 assault, aggravated arson, kidnapping, aggravated

1 kidnapping, child abduction, trafficking in persons,  
2 involuntary servitude, involuntary sexual servitude of  
3 a minor, or gunrunning.

4 "State's Attorney" includes and is limited to the  
5 State's Attorney or an assistant State's Attorney  
6 designated by the State's Attorney to provide verbal  
7 approval to record or intercept conversations under this  
8 subsection (q).

9 (8) Sunset. This subsection (q) is inoperative on and after  
10 January 1, 2022 ~~2020~~. No conversations intercepted pursuant to  
11 this subsection (q), while operative, shall be inadmissible in  
12 a court of law by virtue of the inoperability of this  
13 subsection (q) on January 1, 2022 ~~2020~~.

14 (9) Recordings, records, and custody. Any private  
15 conversation or private electronic communication intercepted  
16 by a law enforcement officer or a person acting at the  
17 direction of law enforcement shall, if practicable, be recorded  
18 in such a way as will protect the recording from editing or  
19 other alteration. Any and all original recordings made under  
20 this subsection (q) shall be inventoried without unnecessary  
21 delay pursuant to the law enforcement agency's policies for  
22 inventorying evidence. The original recordings shall not be  
23 destroyed except upon an order of a court of competent  
24 jurisdiction; and

25 (r) Electronic recordings, including but not limited to,  
26 motion picture, videotape, digital, or other visual or audio

1 recording, made of a lineup under Section 107A-2 of the Code of  
2 Criminal Procedure of 1963.

3 (Source: P.A. 100-572, eff. 12-29-17.)

4 Section 99. Effective date. This Act takes effect upon  
5 becoming law.