



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB5793

by Rep. Jaime M. Andrade, Jr.

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/2-6  
720 ILCS 5/14-3

from Ch. 38, par. 2-6

Amends the Criminal Code of 2012. Exempts from an eavesdropping violation, with the consent of the owner or lessee of the dwelling in which it is installed, the use of a doorbell or intercommunication device that has audio or video capabilities, or both. Defines "intercommunication device". Includes in the General Definitions Article of the Code that for the purposes of this eavesdropping exemption, "dwelling" means a house, apartment, mobile home, trailer, or other living quarters in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside.

LRB100 18629 RLC 36018 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 Sections 2-6 and 14-3 as follows:

6 (720 ILCS 5/2-6) (from Ch. 38, par. 2-6)

7 Sec. 2-6. "Dwelling". (a) Except as otherwise provided in  
8 subsection (b) of this Section, "dwelling" means a building or  
9 portion thereof, a tent, a vehicle, or other enclosed space  
10 which is used or intended for use as a human habitation, home  
11 or residence.

12 (b) For the purposes of subsection (s) of Section 14-3 and  
13 Section 19-3 of this Code, "dwelling" means a house, apartment,  
14 mobile home, trailer, or other living quarters in which at the  
15 time of the alleged offense the owners or occupants actually  
16 reside or in their absence intend within a reasonable period of  
17 time to reside.

18 (Source: P.A. 84-1289.)

19 (720 ILCS 5/14-3)

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

22 (a) Listening to radio, wireless electronic

1 communications, and television communications of any sort  
2 where the same are publicly made;

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

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

13 (d) Recording or listening with the aid of any device to  
14 any emergency communication made in the normal course of  
15 operations by any federal, state or local law enforcement  
16 agency or institutions dealing in emergency services,  
17 including, but not limited to, hospitals, clinics, ambulance  
18 services, fire fighting agencies, any public utility,  
19 emergency repair facility, civilian defense establishment or  
20 military installation;

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

23 (f) Recording or listening with the aid of any device to  
24 incoming telephone calls of phone lines publicly listed or  
25 advertised as consumer "hotlines" by manufacturers or  
26 retailers of food and drug products. Such recordings must be

1 destroyed, erased or turned over to local law enforcement  
2 authorities within 24 hours from the time of such recording and  
3 shall not be otherwise disseminated. Failure on the part of the  
4 individual or business operating any such recording or  
5 listening device to comply with the requirements of this  
6 subsection shall eliminate any civil or criminal immunity  
7 conferred upon that individual or business by the operation of  
8 this Section;

9 (g) With prior notification to the State's Attorney of the  
10 county in which it is to occur, recording or listening with the  
11 aid of any device to any conversation where a law enforcement  
12 officer, or any person acting at the direction of law  
13 enforcement, is a party to the conversation and has consented  
14 to it being intercepted or recorded under circumstances where  
15 the use of the device is necessary for the protection of the  
16 law enforcement officer or any person acting at the direction  
17 of law enforcement, in the course of an investigation of a  
18 forcible felony, a felony offense of involuntary servitude,  
19 involuntary sexual servitude of a minor, or trafficking in  
20 persons under Section 10-9 of this Code, an offense involving  
21 prostitution, solicitation of a sexual act, or pandering, a  
22 felony violation of the Illinois Controlled Substances Act, a  
23 felony violation of the Cannabis Control Act, a felony  
24 violation of the Methamphetamine Control and Community  
25 Protection Act, any "streetgang related" or "gang-related"  
26 felony as those terms are defined in the Illinois Streetgang

1 Terrorism Omnibus Prevention Act, or any felony offense  
2 involving any weapon listed in paragraphs (1) through (11) of  
3 subsection (a) of Section 24-1 of this Code. Any recording or  
4 evidence derived as the result of this exemption shall be  
5 inadmissible in any proceeding, criminal, civil or  
6 administrative, except (i) where a party to the conversation  
7 suffers great bodily injury or is killed during such  
8 conversation, or (ii) when used as direct impeachment of a  
9 witness concerning matters contained in the interception or  
10 recording. The Director of the Department of State Police shall  
11 issue regulations as are necessary concerning the use of  
12 devices, retention of tape recordings, and reports regarding  
13 their use;

14 (g-5) (Blank);

15 (g-6) With approval of the State's Attorney of the county  
16 in which it is to occur, recording or listening with the aid of  
17 any device to any conversation where a law enforcement officer,  
18 or any person acting at the direction of law enforcement, is a  
19 party to the conversation and has consented to it being  
20 intercepted or recorded in the course of an investigation of  
21 child pornography, aggravated child pornography, indecent  
22 solicitation of a child, luring of a minor, sexual exploitation  
23 of a child, aggravated criminal sexual abuse in which the  
24 victim of the offense was at the time of the commission of the  
25 offense under 18 years of age, or criminal sexual abuse by  
26 force or threat of force in which the victim of the offense was

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

1 the court presiding over the criminal case, and, if ruled by  
2 the court to be relevant and otherwise admissible, it shall be  
3 admissible at the trial of the criminal case. Absent such a  
4 ruling, any such recording or evidence shall not be admissible  
5 at the trial of the criminal case;

6 (h) Recordings made simultaneously with the use of an  
7 in-car video camera recording of an oral conversation between a  
8 uniformed peace officer, who has identified his or her office,  
9 and a person in the presence of the peace officer whenever (i)  
10 an officer assigned a patrol vehicle is conducting an  
11 enforcement stop; or (ii) patrol vehicle emergency lights are  
12 activated or would otherwise be activated if not for the need  
13 to conceal the presence of law enforcement.

14 For the purposes of this subsection (h), "enforcement stop"  
15 means an action by a law enforcement officer in relation to  
16 enforcement and investigation duties, including but not  
17 limited to, traffic stops, pedestrian stops, abandoned vehicle  
18 contacts, motorist assists, commercial motor vehicle stops,  
19 roadside safety checks, requests for identification, or  
20 responses to requests for emergency assistance;

21 (h-5) Recordings of utterances made by a person while in  
22 the presence of a uniformed peace officer and while an occupant  
23 of a police vehicle including, but not limited to, (i)  
24 recordings made simultaneously with the use of an in-car video  
25 camera and (ii) recordings made in the presence of the peace  
26 officer utilizing video or audio systems, or both, authorized

1 by the law enforcement agency;

2 (h-10) Recordings made simultaneously with a video camera  
3 recording during the use of a taser or similar weapon or device  
4 by a peace officer if the weapon or device is equipped with  
5 such camera;

6 (h-15) Recordings made under subsection (h), (h-5), or  
7 (h-10) shall be retained by the law enforcement agency that  
8 employs the peace officer who made the recordings for a storage  
9 period of 90 days, unless the recordings are made as a part of  
10 an arrest or the recordings are deemed evidence in any  
11 criminal, civil, or administrative proceeding and then the  
12 recordings must only be destroyed upon a final disposition and  
13 an order from the court. Under no circumstances shall any  
14 recording be altered or erased prior to the expiration of the  
15 designated storage period. Upon completion of the storage  
16 period, the recording medium may be erased and reissued for  
17 operational use;

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

26 (j) The use of a telephone monitoring device by either (1)



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

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

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

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

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

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

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

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

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

26                 (ii) receiving orders for the sale of goods or

1 services;

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

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

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

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

20 (l) Recording the interview or statement of any person when  
21 the person knows that the interview is being conducted by a law  
22 enforcement officer or prosecutor and the interview takes place  
23 at a police station that is currently participating in the  
24 Custodial Interview Pilot Program established under the  
25 Illinois Criminal Justice Information Act;

26 (m) An electronic recording, including but not limited to,

1 a motion picture, videotape, digital, or other visual or audio  
2 recording, made of the interior of a school bus while the  
3 school bus is being used in the transportation of students to  
4 and from school and school-sponsored activities, when the  
5 school board has adopted a policy authorizing such recording,  
6 notice of such recording policy is included in student  
7 handbooks and other documents including the policies of the  
8 school, notice of the policy regarding recording is provided to  
9 parents of students, and notice of such recording is clearly  
10 posted on the door of and inside the school bus.

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

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

22 (o) The use of an eavesdropping camera or audio device  
23 during an ongoing hostage or barricade situation by a law  
24 enforcement officer or individual acting on behalf of a law  
25 enforcement officer when the use of such device is necessary to  
26 protect the safety of the general public, hostages, or law

1 enforcement officers or anyone acting on their behalf;

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

10 (q) (1) With prior request to and written or verbal approval  
11 of the State's Attorney of the county in which the conversation  
12 is anticipated to occur, recording or listening with the aid of  
13 an eavesdropping device to a conversation in which a law  
14 enforcement officer, or any person acting at the direction of a  
15 law enforcement officer, is a party to the conversation and has  
16 consented to the conversation being intercepted or recorded in  
17 the course of an investigation of a qualified offense. The  
18 State's Attorney may grant this approval only after determining  
19 that reasonable cause exists to believe that inculpatory  
20 conversations concerning a qualified offense will occur with a  
21 specified individual or individuals within a designated period  
22 of time.

23 (2) Request for approval. To invoke the exception contained  
24 in this subsection (q), a law enforcement officer shall make a  
25 request for approval to the appropriate State's Attorney. The  
26 request may be written or verbal; however, a written

1 memorialization of the request must be made by the State's  
2 Attorney. This request for approval shall include whatever  
3 information is deemed necessary by the State's Attorney but  
4 shall include, at a minimum, the following information about  
5 each specified individual whom the law enforcement officer  
6 believes will commit a qualified offense:

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

8 (B) a physical description; or

9 (C) failing either (A) or (B) of this paragraph (2),  
10 any other supporting information known to the law  
11 enforcement officer at the time of the request that gives  
12 rise to reasonable cause to believe that the specified  
13 individual will participate in an inculpatory conversation  
14 concerning a qualified offense.

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

17 (A) a recording or interception conducted by a  
18 specified law enforcement officer or person acting at the  
19 direction of a law enforcement officer;

20 (B) recording or intercepting conversations with the  
21 individuals specified in the request for approval,  
22 provided that the verbal approval shall be deemed to  
23 include the recording or intercepting of conversations  
24 with other individuals, unknown to the law enforcement  
25 officer at the time of the request for approval, who are  
26 acting in conjunction with or as co-conspirators with the

1 individuals specified in the request for approval in the  
2 commission of a qualified offense;

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

5 (D) the written request for approval, if applicable, or  
6 the written memorialization must be filed, along with the  
7 written approval, with the circuit clerk of the  
8 jurisdiction on the next business day following the  
9 expiration of the authorized period of time, and shall be  
10 subject to review by the Chief Judge or his or her designee  
11 as deemed appropriate by the court.

12 (3.5) The written memorialization of the request for  
13 approval and the written approval by the State's Attorney may  
14 be in any format, including via facsimile, email, or otherwise,  
15 so long as it is capable of being filed with the circuit clerk.

16 (3.10) Beginning March 1, 2015, each State's Attorney shall  
17 annually submit a report to the General Assembly disclosing:

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

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

22 (4) Admissibility of evidence. No part of the contents of  
23 any wire, electronic, or oral communication that has been  
24 recorded or intercepted as a result of this exception may be  
25 received in evidence in any trial, hearing, or other proceeding  
26 in or before any court, grand jury, department, officer,

1 agency, regulatory body, legislative committee, or other  
2 authority of this State, or a political subdivision of the  
3 State, other than in a prosecution of:

4 (A) the qualified offense for which approval was given  
5 to record or intercept a conversation under this subsection  
6 (q);

7 (B) a forcible felony committed directly in the course  
8 of the investigation of the qualified offense for which  
9 approval was given to record or intercept a conversation  
10 under this subsection (q); or

11 (C) any other forcible felony committed while the  
12 recording or interception was approved in accordance with  
13 this subsection (q), but for this specific category of  
14 prosecutions, only if the law enforcement officer or person  
15 acting at the direction of a law enforcement officer who  
16 has consented to the conversation being intercepted or  
17 recorded suffers great bodily injury or is killed during  
18 the commission of the charged forcible felony.

19 (5) Compliance with the provisions of this subsection is a  
20 prerequisite to the admissibility in evidence of any part of  
21 the contents of any wire, electronic or oral communication that  
22 has been intercepted as a result of this exception, but nothing  
23 in this subsection shall be deemed to prevent a court from  
24 otherwise excluding the evidence on any other ground recognized  
25 by State or federal law, nor shall anything in this subsection  
26 be deemed to prevent a court from independently reviewing the



1 admissibility of the evidence for compliance with the Fourth  
2 Amendment to the U.S. Constitution or with Article I, Section 6  
3 of the Illinois Constitution.

4 (6) Use of recordings or intercepts unrelated to qualified  
5 offenses. Whenever any private conversation or private  
6 electronic communication has been recorded or intercepted as a  
7 result of this exception that is not related to an offense for  
8 which the recording or intercept is admissible under paragraph  
9 (4) of this subsection (q), no part of the contents of the  
10 communication and evidence derived from the communication may  
11 be received in evidence in any trial, hearing, or other  
12 proceeding in or before any court, grand jury, department,  
13 officer, agency, regulatory body, legislative committee, or  
14 other authority of this State, or a political subdivision of  
15 the State, nor may it be publicly disclosed in any way.

16 (6.5) The Department of State Police shall adopt rules as  
17 are necessary concerning the use of devices, retention of  
18 recordings, and reports regarding their use under this  
19 subsection (q).

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

22 "Forcible felony" includes and is limited to those  
23 offenses contained in Section 2-8 of the Criminal Code of  
24 1961 as of the effective date of this amendatory Act of the  
25 97th General Assembly, and only as those offenses have been  
26 defined by law or judicial interpretation as of that date.

1 "Qualified offense" means and is limited to:

2 (A) a felony violation of the Cannabis Control Act,  
3 the Illinois Controlled Substances Act, or the  
4 Methamphetamine Control and Community Protection Act,  
5 except for violations of:

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

7 (ii) Section 402 of the Illinois Controlled  
8 Substances Act; and

9 (iii) Section 60 of the Methamphetamine  
10 Control and Community Protection Act; and

11 (B) first degree murder, solicitation of murder  
12 for hire, predatory criminal sexual assault of a child,  
13 criminal sexual assault, aggravated criminal sexual  
14 assault, aggravated arson, kidnapping, aggravated  
15 kidnapping, child abduction, trafficking in persons,  
16 involuntary servitude, involuntary sexual servitude of  
17 a minor, or gunrunning.

18 "State's Attorney" includes and is limited to the  
19 State's Attorney or an assistant State's Attorney  
20 designated by the State's Attorney to provide verbal  
21 approval to record or intercept conversations under this  
22 subsection (q).

23 (8) Sunset. This subsection (q) is inoperative on and after  
24 January 1, 2020. No conversations intercepted pursuant to this  
25 subsection (q), while operative, shall be inadmissible in a  
26 court of law by virtue of the inoperability of this subsection

1 (q) on January 1, 2020.

2 (9) Recordings, records, and custody. Any private  
3 conversation or private electronic communication intercepted  
4 by a law enforcement officer or a person acting at the  
5 direction of law enforcement shall, if practicable, be recorded  
6 in such a way as will protect the recording from editing or  
7 other alteration. Any and all original recordings made under  
8 this subsection (q) shall be inventoried without unnecessary  
9 delay pursuant to the law enforcement agency's policies for  
10 inventorying evidence. The original recordings shall not be  
11 destroyed except upon an order of a court of competent  
12 jurisdiction; ~~and~~

13 (r) Electronic recordings, including but not limited to,  
14 motion picture, videotape, digital, or other visual or audio  
15 recording, made of a lineup under Section 107A-2 of the Code of  
16 Criminal Procedure of 1963; and

17 (s) With the consent of the owner or lessee of the dwelling  
18 in which it is installed, the use of a doorbell or  
19 intercommunication device that has audio or video  
20 capabilities, or both. As used in this paragraph (s),  
21 "intercommunication device" means a communication system  
22 installed in a dwelling with a loudspeaker or receiver for  
23 listening and a microphone for speaking at one or more points.

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