



Rep. Elizabeth Hernandez

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10200HB1097ham001

LRB102 03111 RLC 38561 a

1 AMENDMENT TO HOUSE BILL 1097

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1097 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 2012 is amended by  
5 changing Sections 14-3 and 33G-9 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  
13 any common carrier by wire incidental to the normal course  
14 of their employment in the operation, maintenance or  
15 repair of the equipment of such common carrier by wire so  
16 long as no information obtained thereby is used or

1           divulged by the hearer;

2           (c) Any broadcast by radio, television or otherwise  
3 whether it be a broadcast or recorded for the purpose of  
4 later broadcasts of any function where the public is in  
5 attendance and the conversations are overheard incidental  
6 to the main purpose for which such broadcasts are then  
7 being made;

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

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

18           (f) Recording or listening with the aid of any device  
19 to incoming telephone calls of phone lines publicly listed  
20 or advertised as consumer "hotlines" by manufacturers or  
21 retailers of food and drug products. Such recordings must  
22 be destroyed, erased or turned over to local law  
23 enforcement authorities within 24 hours from the time of  
24 such recording and shall not be otherwise disseminated.  
25 Failure on the part of the individual or business  
26 operating any such recording or listening device to comply

1 with the requirements of this subsection shall eliminate  
2 any civil or criminal immunity conferred upon that  
3 individual or business by the operation of this Section;

4 (g) With prior notification to the State's Attorney of  
5 the county in which it is to occur, recording or listening  
6 with the aid of any device to any conversation where a law  
7 enforcement officer, or any person acting at the direction  
8 of law enforcement, is a party to the conversation and has  
9 consented to it being intercepted or recorded under  
10 circumstances where the use of the device is necessary for  
11 the protection of the law enforcement officer or any  
12 person acting at the direction of law enforcement, in the  
13 course of an investigation of a forcible felony, a felony  
14 offense of involuntary servitude, involuntary sexual  
15 servitude of a minor, or trafficking in persons under  
16 Section 10-9 of this Code, an offense involving  
17 prostitution, solicitation of a sexual act, or pandering,  
18 a felony violation of the Illinois Controlled Substances  
19 Act, a felony violation of the Cannabis Control Act, a  
20 felony violation of the Methamphetamine Control and  
21 Community Protection Act, any "streetgang related" or  
22 "gang-related" felony as those terms are defined in the  
23 Illinois Streetgang Terrorism Omnibus Prevention Act, or  
24 any felony offense involving any weapon listed in  
25 paragraphs (1) through (11) of subsection (a) of Section  
26 24-1 of this Code. Any recording or evidence derived as

1 the result of this exemption shall be inadmissible in any  
2 proceeding, criminal, civil or administrative, except (i)  
3 where a party to the conversation suffers great bodily  
4 injury or is killed during such conversation, or (ii) when  
5 used as direct impeachment of a witness concerning matters  
6 contained in the interception or recording. The Director  
7 of the Illinois State Police shall issue regulations as  
8 are necessary concerning the use of devices, retention of  
9 tape recordings, and reports regarding their use;

10 (g-5) (Blank);

11 (g-6) With approval of the State's Attorney of the  
12 county in which it is to occur, recording or listening  
13 with the aid of any device to any conversation where a law  
14 enforcement officer, or any person acting at the direction  
15 of law enforcement, is a party to the conversation and has  
16 consented to it being intercepted or recorded in the  
17 course of an investigation of child pornography,  
18 aggravated child pornography, indecent solicitation of a  
19 child, luring of a minor, sexual exploitation of a child,  
20 aggravated criminal sexual abuse in which the victim of  
21 the offense was at the time of the commission of the  
22 offense under 18 years of age, or criminal sexual abuse by  
23 force or threat of force in which the victim of the offense  
24 was at the time of the commission of the offense under 18  
25 years of age. 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,  
3 or upon its denial, any continuing use shall immediately  
4 terminate. The Director of the Illinois State Police shall  
5 issue rules as are necessary concerning the use of  
6 devices, retention of recordings, and reports regarding  
7 their use. Any recording or evidence obtained or derived  
8 in the course of an investigation of child pornography,  
9 aggravated child pornography, indecent solicitation of a  
10 child, luring of a minor, sexual exploitation of a child,  
11 aggravated criminal sexual abuse in which the victim of  
12 the offense was at the time of the commission of the  
13 offense under 18 years of age, or criminal sexual abuse by  
14 force or threat of force in which the victim of the offense  
15 was at the time of the commission of the offense under 18  
16 years of age shall, upon motion of the State's Attorney or  
17 Attorney General prosecuting any case involving child  
18 pornography, aggravated child pornography, indecent  
19 solicitation of a child, luring of a minor, sexual  
20 exploitation of a child, aggravated criminal sexual abuse  
21 in which the victim of the offense was at the time of the  
22 commission of the offense under 18 years of age, or  
23 criminal sexual abuse by force or threat of force in which  
24 the victim of the offense was at the time of the commission  
25 of the offense under 18 years of age be reviewed in camera  
26 with notice to all parties present by the court presiding

1 over the criminal case, and, if ruled by the court to be  
2 relevant and otherwise admissible, it shall be admissible  
3 at the trial of the criminal case. Absent such a ruling,  
4 any such recording or evidence shall not be admissible at  
5 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  
8 between a uniformed peace officer, who has identified his  
9 or her office, and a person in the presence of the peace  
10 officer whenever (i) an officer assigned a patrol vehicle  
11 is conducting an enforcement stop; or (ii) patrol vehicle  
12 emergency lights are activated or would otherwise be  
13 activated if not for the need to conceal the presence of  
14 law enforcement.

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

23 (h-5) Recordings of utterances made by a person while  
24 in the presence of a uniformed peace officer and while an  
25 occupant of a police vehicle including, but not limited  
26 to, (i) recordings made simultaneously with the use of an

1 in-car video camera and (ii) recordings made in the  
2 presence of the peace officer utilizing video or audio  
3 systems, or both, authorized by the law enforcement  
4 agency;

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

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

22 (i) Recording of a conversation made by or at the  
23 request of a person, not a law enforcement officer or  
24 agent of a law enforcement officer, who is a party to the  
25 conversation, under reasonable suspicion that another  
26 party to the conversation is committing, is about to

1           commit, or has committed a criminal offense against the  
2           person or a member of his or her immediate household, and  
3           there is reason to believe that evidence of the criminal  
4           offense may be obtained by the recording;

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

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

21           (ii) the monitoring is used with the consent of at  
22          least one person who is an active party to the  
23          marketing or opinion research conversation or  
24          telephone solicitation conversation being monitored.

25          No communication or conversation or any part, portion,  
26          or aspect of the communication or conversation made,



1       acquired, or obtained, directly or indirectly, under this  
2       exemption (j), may be, directly or indirectly, furnished  
3       to any law enforcement officer, agency, or official for  
4       any purpose or used in any inquiry or investigation, or  
5       used, directly or indirectly, in any administrative,  
6       judicial, or other proceeding, or divulged to any third  
7       party.

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

19      Business entities that use a telephone monitoring or  
20      telephone recording system pursuant to this exemption (j)  
21      shall provide current and prospective employees with  
22      notice that the monitoring or recordings may occur during  
23      the course of their employment. The notice shall include  
24      prominent signage notification within the workplace.

25      Business entities that use a telephone monitoring or  
26      telephone recording system pursuant to this exemption (j)

1 shall provide their employees or agents with access to  
2 personal-only telephone lines which may be pay telephones,  
3 that are not subject to telephone monitoring or telephone  
4 recording.

5 For the purposes of this subsection (j), "telephone  
6 solicitation" means a communication through the use of a  
7 telephone by live operators:

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

9 (ii) receiving orders for the sale of goods or  
10 services;

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

12 or

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

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

23 (k) Electronic recordings, including but not limited  
24 to, a motion picture, videotape, digital, or other visual  
25 or audio recording, made of a custodial interrogation of  
26 an individual at a police station or other place of

1 detention by a law enforcement officer under Section  
2 5-401.5 of the Juvenile Court Act of 1987 or Section  
3 103-2.1 of the Code of Criminal Procedure of 1963;

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

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

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

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

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

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

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

25 (q) (1) With prior request to and written or verbal  
26 approval of the State's Attorney of the county in which

1 the conversation is anticipated to occur, recording or  
2 listening with the aid of an eavesdropping device to a  
3 conversation in which a law enforcement officer, or any  
4 person acting at the direction of a law enforcement  
5 officer, is a party to the conversation and has consented  
6 to the conversation being intercepted or recorded in the  
7 course of an investigation of a qualified offense. The  
8 State's Attorney may grant this approval only after  
9 determining that reasonable cause exists to believe that  
10 inculpatory conversations concerning a qualified offense  
11 will occur with a specified individual or individuals  
12 within a designated period of time.

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

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

26 (B) a physical description; or

1 (C) failing either (A) or (B) of this paragraph  
2 (2), any other supporting information known to the law  
3 enforcement officer at the time of the request that  
4 gives rise to reasonable cause to believe that the  
5 specified individual will participate in an  
6 inculpatory conversation concerning a qualified  
7 offense.

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

11 (A) a recording or interception conducted by a  
12 specified law enforcement officer or person acting at  
13 the direction of a law enforcement officer;

14 (B) recording or intercepting conversations with  
15 the individuals specified in the request for approval,  
16 provided that the verbal approval shall be deemed to  
17 include the recording or intercepting of conversations  
18 with other individuals, unknown to the law enforcement  
19 officer at the time of the request for approval, who  
20 are acting in conjunction with or as co-conspirators  
21 with the individuals specified in the request for  
22 approval in the commission of a qualified offense;

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

25 (D) the written request for approval, if  
26 applicable, or the written memorialization must be

1 filed, along with the written approval, with the  
2 circuit clerk of the jurisdiction on the next business  
3 day following the expiration of the authorized period  
4 of time, and shall be subject to review by the Chief  
5 Judge or his or her designee as deemed appropriate by  
6 the court.

7 (3.5) The written memorialization of the request for  
8 approval and the written approval by the State's Attorney  
9 may be in any format, including via facsimile, email, or  
10 otherwise, so long as it is capable of being filed with the  
11 circuit clerk.

12 (3.10) Beginning March 1, 2015, each State's Attorney  
13 shall annually submit a report to the General Assembly  
14 disclosing:

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

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

19 (4) Admissibility of evidence. No part of the contents  
20 of any wire, electronic, or oral communication that has  
21 been recorded or intercepted as a result of this exception  
22 may be received in evidence in any trial, hearing, or  
23 other proceeding in or before any court, grand jury,  
24 department, officer, agency, regulatory body, legislative  
25 committee, or other authority of this State, or a  
26 political subdivision of the State, other than in a

1 prosecution of:

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

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

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

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



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

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

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

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

23                 "Forcible felony" includes and is limited to those  
24                 offenses contained in Section 2-8 of the Criminal Code  
25                 of 1961 as of the effective date of this amendatory Act  
26                 of the 97th General Assembly, and only as those

1 offenses have been defined by law or judicial  
2 interpretation as of that date.

3 "Qualified offense" means and is limited to:

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

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

9 (ii) Section 402 of the Illinois  
10 Controlled Substances Act; and

11 (iii) Section 60 of the Methamphetamine  
12 Control and Community Protection Act; and

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

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

26 (8) Sunset. This subsection (q) is inoperative on and

1 after January 1, 2025 ~~2023~~. No conversations intercepted  
2 pursuant to this subsection (q), while operative, shall be  
3 inadmissible in a court of law by virtue of the  
4 inoperability of this subsection (q) on January 1, 2025  
5 ~~2023~~.

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

18 (r) Electronic recordings, including but not limited  
19 to, motion picture, videotape, digital, or other visual or  
20 audio recording, made of a lineup under Section 107A-2 of  
21 the Code of Criminal Procedure of 1963.

22 (Source: P.A. 101-80, eff. 7-12-19; 102-538, eff. 8-20-21.)

23 (720 ILCS 5/33G-9)

24 (Section scheduled to be repealed on June 11, 2022)

25 Sec. 33G-9. Repeal. This Article is repealed on June 11,

1 2024 ~~2022~~.

2 (Source: P.A. 100-1, eff. 6-9-17.)

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