



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5342

Introduced 1/31/2022, by Rep. Patrick Windhorst

SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-3

Amends the Criminal Code of 2012. Eliminates the sunset of the exemption from an eavesdropping violation 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 specified in the statute. Effective immediately.

LRB102 24784 RLC 34027 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
5 changing 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
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
17 divulged by the hearer;

18 (c) Any broadcast by radio, television or otherwise
19 whether it be a broadcast or recorded for the purpose of
20 later broadcasts of any function where the public is in
21 attendance and the conversations are overheard incidental
22 to the main purpose for which such broadcasts are then
23 being made;

1 (d) Recording or listening with the aid of any device
2 to any emergency communication made in the normal course
3 of operations by any federal, state or local law
4 enforcement agency or institutions dealing in emergency
5 services, including, but not limited to, hospitals,
6 clinics, ambulance services, fire fighting agencies, any
7 public utility, emergency repair facility, civilian
8 defense establishment or military installation;

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

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

23 (g) With prior notification to the State's Attorney of
24 the county in which it is to occur, recording or listening
25 with the aid of any device to any conversation where a law
26 enforcement officer, or any person acting at the direction

1 of law enforcement, is a party to the conversation and has
2 consented to it being intercepted or recorded under
3 circumstances where the use of the device is necessary for
4 the protection of the law enforcement officer or any
5 person acting at the direction of law enforcement, in the
6 course of an investigation of a forcible felony, a felony
7 offense of involuntary servitude, involuntary sexual
8 servitude of a minor, or trafficking in persons under
9 Section 10-9 of this Code, an offense involving
10 prostitution, solicitation of a sexual act, or pandering,
11 a felony violation of the Illinois Controlled Substances
12 Act, a felony violation of the Cannabis Control Act, a
13 felony violation of the Methamphetamine Control and
14 Community Protection Act, any "streetgang related" or
15 "gang-related" felony as those terms are defined in the
16 Illinois Streetgang Terrorism Omnibus Prevention Act, or
17 any felony offense involving any weapon listed in
18 paragraphs (1) through (11) of subsection (a) of Section
19 24-1 of this Code. Any recording or evidence derived as
20 the result of this exemption shall be inadmissible in any
21 proceeding, criminal, civil or administrative, except (i)
22 where a party to the conversation suffers great bodily
23 injury or is killed during such conversation, or (ii) when
24 used as direct impeachment of a witness concerning matters
25 contained in the interception or recording. The Director
26 of the Illinois State Police shall issue regulations as

1 are necessary concerning the use of devices, retention of
2 tape recordings, and reports regarding their use;

3 (g-5) (Blank);

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

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

25 (h) Recordings made simultaneously with the use of an
26 in-car video camera recording of an oral conversation

1 between a uniformed peace officer, who has identified his
2 or her office, and a person in the presence of the peace
3 officer whenever (i) an officer assigned a patrol vehicle
4 is conducting an enforcement stop; or (ii) patrol vehicle
5 emergency lights are activated or would otherwise be
6 activated if not for the need to conceal the presence of
7 law enforcement.

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

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

24 (h-10) Recordings made simultaneously with a video
25 camera recording during the use of a taser or similar
26 weapon or device by a peace officer if the weapon or device

1 is equipped with such camera;

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

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

24 (j) The use of a telephone monitoring device by either
25 (1) a corporation or other business entity engaged in
26 marketing or opinion research or (2) a corporation or

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

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

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

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

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

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

18 Business entities that use a telephone monitoring or
19 telephone recording system pursuant to this exemption (j)
20 shall provide their employees or agents with access to
21 personal-only telephone lines which may be pay telephones,
22 that are not subject to telephone monitoring or telephone
23 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;
- 5 or
- 6 (iv) engaging in the solicitation, administration,
- 7 or collection of bank or retail credit accounts.

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

9 opinion research" means a marketing or opinion research

10 interview conducted by a live telephone interviewer

11 engaged by a corporation or other business entity whose

12 principal business is the design, conduct, and analysis of

13 polls and surveys measuring the opinions, attitudes, and

14 responses of respondents toward products and services, or

15 social or political issues, or both;

16 (k) Electronic recordings, including but not limited

17 to, a motion picture, videotape, digital, or other visual

18 or audio recording, made of a custodial interrogation of

19 an individual at a police station or other place of

20 detention by a law enforcement officer under Section

21 5-401.5 of the Juvenile Court Act of 1987 or Section

22 103-2.1 of the Code of Criminal Procedure of 1963;

23 (l) Recording the interview or statement of any person

24 when the person knows that the interview is being

25 conducted by a law enforcement officer or prosecutor and

26 the interview takes place at a police station that is

1 currently participating in the Custodial Interview Pilot
2 Program established under the Illinois Criminal Justice
3 Information Act;

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

16 Recordings made pursuant to this subsection (m) shall
17 be confidential records and may only be used by school
18 officials (or their designees) and law enforcement
19 personnel for investigations, school disciplinary actions
20 and hearings, proceedings under the Juvenile Court Act of
21 1987, and criminal prosecutions, related to incidents
22 occurring in or around the school bus;

23 (n) Recording or listening to an audio transmission
24 from a microphone placed by a person under the authority
25 of a law enforcement agency inside a bait car surveillance
26 vehicle while simultaneously capturing a photographic or

1 video image;

2 (o) The use of an eavesdropping camera or audio device
3 during an ongoing hostage or barricade situation by a law
4 enforcement officer or individual acting on behalf of a
5 law enforcement officer when the use of such device is
6 necessary to protect the safety of the general public,
7 hostages, or law enforcement officers or anyone acting on
8 their behalf;

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

18 (q) (1) With prior request to and written or verbal
19 approval of the State's Attorney of the county in which
20 the conversation is anticipated to occur, recording or
21 listening with the aid of an eavesdropping device to a
22 conversation in which a law enforcement officer, or any
23 person acting at the direction of a law enforcement
24 officer, is a party to the conversation and has consented
25 to the conversation being intercepted or recorded in the
26 course of an investigation of a qualified offense. The

1 State's Attorney may grant this approval only after
2 determining that reasonable cause exists to believe that
3 inculpatory conversations concerning a qualified offense
4 will occur with a specified individual or individuals
5 within a designated period of time.

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

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

19 (B) a physical description; or

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

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

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

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

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

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

26 (3.5) The written memorialization of the request for

1 approval and the written approval by the State's Attorney
2 may be in any format, including via facsimile, email, or
3 otherwise, so long as it is capable of being filed with the
4 circuit clerk.

5 (3.10) Beginning March 1, 2015, each State's Attorney
6 shall annually submit a report to the General Assembly
7 disclosing:

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

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

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

21 (A) the qualified offense for which approval was
22 given to record or intercept a conversation under this
23 subsection (q);

24 (B) a forcible felony committed directly in the
25 course of the investigation of the qualified offense
26 for which approval was given to record or intercept a

1 conversation under this subsection (q); or

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

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

23 (6) Use of recordings or intercepts unrelated to
24 qualified offenses. Whenever any private conversation or
25 private electronic communication has been recorded or
26 intercepted as a result of this exception that is not

1 related to an offense for which the recording or intercept
2 is admissible under paragraph (4) of this subsection (q),
3 no part of the contents of the communication and evidence
4 derived from the communication may be received in evidence
5 in any trial, hearing, or other proceeding in or before
6 any court, grand jury, department, officer, agency,
7 regulatory body, legislative committee, or other authority
8 of this State, or a political subdivision of the State,
9 nor may it be publicly disclosed in any way.

10 (6.5) The Illinois State Police shall adopt rules as
11 are necessary concerning the use of devices, retention of
12 recordings, and reports regarding their use under this
13 subsection (q).

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

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

22 "Qualified offense" means and is limited to:

23 (A) a felony violation of the Cannabis Control
24 Act, the Illinois Controlled Substances Act, or
25 the Methamphetamine Control and Community
26 Protection Act, except for violations of:

1 (i) Section 4 of the Cannabis Control Act;
2 (ii) Section 402 of the Illinois
3 Controlled Substances Act; and
4 (iii) Section 60 of the Methamphetamine
5 Control and Community Protection Act; and
6 (B) first degree murder, solicitation of
7 murder for hire, predatory criminal sexual assault
8 of a child, criminal sexual assault, aggravated
9 criminal sexual assault, aggravated arson,
10 kidnapping, aggravated kidnapping, child
11 abduction, trafficking in persons, involuntary
12 servitude, involuntary sexual servitude of a
13 minor, or gunrunning.

14 "State's Attorney" includes and is limited to the
15 State's Attorney or an assistant State's Attorney
16 designated by the State's Attorney to provide verbal
17 approval to record or intercept conversations under
18 this subsection (q).

19 (8) (Blank). ~~Sunset. This subsection (q) is~~
20 ~~inoperative on and after January 1, 2023. No conversations~~
21 ~~intercepted pursuant to this subsection (q), while~~
22 ~~operative, shall be inadmissible in a court of law by~~
23 ~~virtue of the inoperability of this subsection (q) on~~
24 ~~January 1, 2023.~~

25 (9) Recordings, records, and custody. Any private
26 conversation or private electronic communication

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

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

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

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.