



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0863

Introduced 2/2/2005, by Rep. Jim Sacia - John J. Millner

SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-3

from Ch. 38, par. 14-3

Amends the Criminal Code of 1961. Provides that the exemption from an eavesdropping violation for recordings made simultaneously with a video recording of an oral conversation between a peace officer who has identified his or her office and a person stopped for an investigation of an offense under the Illinois Vehicle Code applies only if the recordings are used: (1) as evidence of traffic or criminal law violations that arise from the same stop for the investigation of an offense under the Illinois Vehicle Code; (2) to investigate the veracity of a complaint against the peace officer if the complainant was a participant at the traffic stop in which the incident that gave rise to the complaint occurs; or (3) to evaluate the peace officer's performance for the sole purpose of providing continuous training to members of the police department. Provides that each police department that uses a recording for any of these purposes must have adopted a policy describing the procedures to be followed by a peace officer of the department who conducts investigative stops and makes these recordings. Effective immediately.

LRB094 04254 RLC 34278 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 1961 is amended by changing
5 Section 14-3 as follows:

6 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

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

9 (a) Listening to radio, wireless and television
10 communications of any sort where the same are publicly made;

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

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

21 (d) Recording or listening with the aid of any device to
22 any emergency communication made in the normal course of
23 operations by any federal, state or local law enforcement
24 agency or institutions dealing in emergency services,
25 including, but not limited to, hospitals, clinics, ambulance
26 services, fire fighting agencies, any public utility,
27 emergency repair facility, civilian defense establishment or
28 military installation;

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

31 (f) Recording or listening with the aid of any device to
32 incoming telephone calls of phone lines publicly listed or

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

11 (g) With prior notification to the State's Attorney of the
12 county in which it is to occur, recording or listening with the
13 aid of any device to any conversation where a law enforcement
14 officer, or any person acting at the direction of law
15 enforcement, is a party to the conversation and has consented
16 to it being intercepted or recorded under circumstances where
17 the use of the device is necessary for the protection of the
18 law enforcement officer or any person acting at the direction
19 of law enforcement, in the course of an investigation of a
20 forcible felony, a felony violation of the Illinois Controlled
21 Substances Act, a felony violation of the Cannabis Control Act,
22 or any "streetgang related" or "gang-related" felony as those
23 terms are defined in the Illinois Streetgang Terrorism Omnibus
24 Prevention Act. Any recording or evidence derived as the result
25 of this exemption shall be inadmissible in any proceeding,
26 criminal, civil or administrative, except (i) where a party to
27 the conversation suffers great bodily injury or is killed
28 during such conversation, or (ii) when used as direct
29 impeachment of a witness concerning matters contained in the
30 interception or recording. The Director of the Department of
31 State Police shall issue regulations as are necessary
32 concerning the use of devices, retention of tape recordings,
33 and reports regarding their use;

34 (g-5) With approval of the State's Attorney of the county
35 in which it is to occur, recording or listening with the aid of
36 any device to any conversation where a law enforcement officer,

1 or any person acting at the direction of law enforcement, is a
2 party to the conversation and has consented to it being
3 intercepted or recorded in the course of an investigation of
4 any offense defined in Article 29D of this Code. In all such
5 cases, an application for an order approving the previous or
6 continuing use of an eavesdropping device must be made within
7 48 hours of the commencement of such use. In the absence of
8 such an order, or upon its denial, any continuing use shall
9 immediately terminate. The Director of State Police shall issue
10 rules as are necessary concerning the use of devices, retention
11 of tape recordings, and reports regarding their use.

12 Any recording or evidence obtained or derived in the course
13 of an investigation of any offense defined in Article 29D of
14 this Code shall, upon motion of the State's Attorney or
15 Attorney General prosecuting any violation of Article 29D, be
16 reviewed in camera with notice to all parties present by the
17 court presiding over the criminal case, and, if ruled by the
18 court to be relevant and otherwise admissible, it shall be
19 admissible at the trial of the criminal case.

20 This subsection (g-5) is inoperative on and after January
21 1, 2005. No conversations recorded or monitored pursuant to
22 this subsection (g-5) shall be inadmissible ~~inadmissible~~ in a
23 court of law by virtue of the repeal of this subsection (g-5)
24 on January 1, 2005;

25 (h) Recordings made simultaneously with a video recording
26 of an oral conversation between a peace officer, who has
27 identified his or her office, and a person stopped for an
28 investigation of an offense under the Illinois Vehicle Code but
29 only if the recordings are used: (1) as evidence of traffic or
30 criminal law violations that arise from the same stop for the
31 investigation of an offense under the Illinois Vehicle Code;
32 (2) to investigate the veracity of a complaint against the
33 peace officer if the complainant was a participant at the
34 traffic stop in which the incident that gave rise to the
35 complaint occurs; or (3) to evaluate the peace officer's
36 performance for the sole purpose of providing continuous

1 training to members of the police department. Each police
2 department that uses a recording for any purpose described in
3 this subsection (h) must have adopted a policy describing the
4 procedures to be followed by a peace officer of the department
5 who conducts investigative stops and makes recordings under
6 this subsection (h);

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

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

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

30 (ii) the monitoring is used with the consent of at
31 least one person who is an active party to the marketing or
32 opinion research conversation or telephone solicitation
33 conversation being monitored.

34 No communication or conversation or any part, portion, or
35 aspect of the communication or conversation made, acquired, or
36 obtained, directly or indirectly, under this exemption (j), may

1 be, directly or indirectly, furnished to any law enforcement
2 officer, agency, or official for any purpose or used in any
3 inquiry or investigation, or used, directly or indirectly, in
4 any administrative, judicial, or other proceeding, or divulged
5 to any third party.

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

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

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

27 For the purposes of this subsection (j), "telephone
28 solicitation" means a communication through the use of a
29 telephone by live operators:

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

31 (ii) receiving orders for the sale of goods or
32 services;

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

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

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

1 opinion research" means a marketing or opinion research
2 interview conducted by a live telephone interviewer engaged by
3 a corporation or other business entity whose principal business
4 is the design, conduct, and analysis of polls and surveys
5 measuring the opinions, attitudes, and responses of
6 respondents toward products and services, or social or
7 political issues, or both;i-

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

15 (l) ~~(k)~~ Recording the interview or statement of any person
16 when the person knows that the interview is being conducted by
17 a law enforcement officer or prosecutor and the interview takes
18 place at a police station that is currently participating in
19 the Custodial Interview Pilot Program established under the
20 Illinois Criminal Justice Information Act.

21 (Source: P.A. 92-854, eff. 12-5-02; 93-206, eff. 7-18-03;
22 93-517, eff. 8-6-03; 93-605, eff. 11-19-03; revised 12-9-03.)

23 Section 99. Effective date. This Act takes effect upon
24 becoming law.