



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB4785

by Rep. Dennis M. Reboletti

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-3

Amends the Criminal Code of 1961. Exempts from the offense of eavesdropping, with prior notification and approval of the State's Attorney of the county in which the conversation is anticipated to occur, the 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 an undercover conversation and has consented to the conversation being intercepted or recorded in the course of an investigation of a felony violation of the Illinois Controlled Substances Act, a felony violation of the Cannabis Control Act, or a felony violation of the Methamphetamine Control and Community Protection Act. Requires the Director of State Police to adopt any necessary rules concerning the use of devices, retention of recording media, and reports regarding their use. Provides that any recording or evidence obtained or derived as a result of this exemption shall, upon motion of the State's Attorney or Attorney General prosecuting any felony violation of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act, be reviewed in camera with notice to all parties present by the court presiding over the criminal case, and, if ruled by the court to be relevant and otherwise admissible, it shall be admissible at the trial of the criminal case.

LRB095 14921 RLC 40866 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)

7 (Text of Section after amendment by P.A. 95-463)

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

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

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

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

22 (d) Recording or listening with the aid of any device to  
23 any emergency communication made in the normal course of

1 operations by any federal, state or local law enforcement  
2 agency or institutions dealing in emergency services,  
3 including, but not limited to, hospitals, clinics, ambulance  
4 services, fire fighting agencies, any public utility,  
5 emergency repair facility, civilian defense establishment or  
6 military installation;

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

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

21 (g) With prior notification to the State's Attorney of the  
22 county in which it is to occur, recording or listening with the  
23 aid of any device to any conversation where a law enforcement  
24 officer, or any person acting at the direction of law  
25 enforcement, is a party to the conversation and has consented  
26 to it being intercepted or recorded under circumstances where

1 the use of the device is necessary for the protection of the  
2 law enforcement officer or any person acting at the direction  
3 of law enforcement, in the course of an investigation of a  
4 forcible felony, a felony violation of the Illinois Controlled  
5 Substances Act, a felony violation of the Cannabis Control Act,  
6 a felony violation of the Methamphetamine Control and Community  
7 Protection Act, or any "streetgang related" or "gang-related"  
8 felony as those terms are defined in the Illinois Streetgang  
9 Terrorism Omnibus Prevention Act. Any recording or evidence  
10 derived as the result of this exemption shall be inadmissible  
11 in any proceeding, criminal, civil or administrative, except  
12 (i) where a party to the conversation suffers great bodily  
13 injury or is killed during such conversation, or (ii) when used  
14 as direct impeachment of a witness concerning matters contained  
15 in the interception or recording. The Director of the  
16 Department of State Police shall issue regulations as are  
17 necessary concerning the use of devices, retention of tape  
18 recordings, and reports regarding their use;

19 (g-5) With approval of the State's Attorney of the county  
20 in which it is to occur, recording or listening with the aid of  
21 any device to any conversation where a law enforcement officer,  
22 or any person acting at the direction of law enforcement, is a  
23 party to the conversation and has consented to it being  
24 intercepted or recorded in the course of an investigation of  
25 any offense defined in Article 29D of this Code. In all such  
26 cases, an application for an order approving the previous or

1 continuing use of an eavesdropping device must be made within  
2 48 hours of the commencement of such use. In the absence of  
3 such an order, or upon its denial, any continuing use shall  
4 immediately terminate. The Director of State Police shall issue  
5 rules as are necessary concerning the use of devices, retention  
6 of tape recordings, and reports regarding their use.

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

15 This subsection (g-5) is inoperative on and after January  
16 1, 2005. No conversations recorded or monitored pursuant to  
17 this subsection (g-5) shall be inadmissible in a court of law  
18 by virtue of the repeal of this subsection (g-5) on January 1,  
19 2005;

20 (g-6) With approval of the State's Attorney of the county  
21 in which it is to occur, recording or listening with the aid of  
22 any device to any conversation where a law enforcement officer,  
23 or any person acting at the direction of law enforcement, is a  
24 party to the conversation and has consented to it being  
25 intercepted or recorded in the course of an investigation of  
26 child pornography. In all such cases, an application for an

1 order approving the previous or continuing use of an  
2 eavesdropping device must be made within 48 hours of the  
3 commencement of such use. In the absence of such an order, or  
4 upon its denial, any continuing use shall immediately  
5 terminate. The Director of State Police shall issue rules as  
6 are necessary concerning the use of devices, retention of  
7 recordings, and reports regarding their use. Any recording or  
8 evidence obtained or derived in the course of an investigation  
9 of child pornography shall, upon motion of the State's Attorney  
10 or Attorney General prosecuting any case involving child  
11 pornography, be reviewed in camera with notice to all parties  
12 present by the court presiding over the criminal case, and, if  
13 ruled by the court to be relevant and otherwise admissible, it  
14 shall be admissible at the trial of the criminal case. Absent  
15 such a ruling, any such recording or evidence shall not be  
16 admissible at the trial of the criminal case;

17 (g-7) With prior notification to and approval of the  
18 State's Attorney or his or her designee of the county in which  
19 the conversation is anticipated to occur, recording or  
20 listening with the aid of an eavesdropping device to a  
21 conversation in which a law enforcement officer, or any person  
22 acting at the direction of law enforcement, is a party to the  
23 conversation and has consented to the conversation being  
24 intercepted or recorded in the course of an investigation of a  
25 felony violation of the Illinois Controlled Substances Act, a  
26 felony violation of the Cannabis Control Act, or a felony

1 violation of the Methamphetamine Control and Community  
2 Protection Act. The Director of State Police shall adopt any  
3 necessary rules concerning the use of eavesdropping devices,  
4 retention of recording media, and reports regarding their use.

5 Any recording or evidence obtained or derived as a result  
6 of this exemption shall, upon motion of the State's Attorney or  
7 Attorney General prosecuting any felony violation of the  
8 Illinois Controlled Substances Act, the Cannabis Control Act,  
9 or the Methamphetamine Control and Community Protection Act, be  
10 reviewed in camera with notice to all parties present by the  
11 court presiding over the criminal case, and, if ruled by the  
12 court to be relevant and otherwise admissible, it shall be  
13 admissible at the trial of the criminal case;

14 (h) Recordings made simultaneously with a video recording  
15 of an oral conversation between a peace officer, who has  
16 identified his or her office, and a person stopped for an  
17 investigation of an offense under the Illinois Vehicle Code;

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; ~~and~~

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; and.

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

22 (Source: P.A. 94-556, eff. 9-11-05; 95-258, eff. 1-1-08;  
23 95-352, eff. 8-23-07; 95-463, eff. 6-1-08; revised 11-19-07.)