



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2137

Introduced 2/14/2008, by Sen. John J. Millner

SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-3

Amends the Criminal Code of 1961. Exempts from an eavesdropping violation any recordings made simultaneously with a video recording of any conversations occurring upon a peace officer responding to a scene in the investigation of any criminal offense under Illinois law. Also exempts from an eavesdropping violation recording or listening with the aid of any device to any conversation where a law enforcement officer, or any person acting at the direction of law enforcement, is a party to the conversation and has consented to it being intercepted or recorded under circumstances where the use of the device is necessary for the protection of the law enforcement officer or any person acting at the direction of law enforcement in the course of an investigation of a felony weapons offense with prior notification to the State's Attorney of the county in which the recording or listening to the conversation is to occur.

LRB095 19401 RLC 45696 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, or any felony offense
10 involving any weapon listed in subsections 24-1(a)(1) through
11 24-1(a)(11) of this Code. Any recording or evidence derived as
12 the result of this exemption shall be inadmissible in any
13 proceeding, criminal, civil or administrative, except (i)
14 where a party to the conversation suffers great bodily injury
15 or is killed during such conversation, or (ii) when used as
16 direct impeachment of a witness concerning matters contained in
17 the interception or recording. The Director of the Department
18 of State Police shall issue regulations as are necessary
19 concerning the use of devices, retention of tape recordings,
20 and reports regarding their use;

21 (g-5) With approval of the State's Attorney of the county
22 in which it is to occur, recording or listening with the aid of
23 any device to any conversation where a law enforcement officer,
24 or any person acting at the direction of law enforcement, is a
25 party to the conversation and has consented to it being
26 intercepted or recorded in the course of an investigation of

1 any offense defined in Article 29D of this Code. In all such
2 cases, an application for an order approving the previous or
3 continuing use of an eavesdropping device must be made within
4 48 hours of the commencement of such use. In the absence of
5 such an order, or upon its denial, any continuing use shall
6 immediately terminate. The Director of State Police shall issue
7 rules as are necessary concerning the use of devices, retention
8 of tape recordings, and reports regarding their use.

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

17 This subsection (g-5) is inoperative on and after January
18 1, 2005. No conversations recorded or monitored pursuant to
19 this subsection (g-5) shall be inadmissible in a court of law
20 by virtue of the repeal of this subsection (g-5) on January 1,
21 2005;

22 (g-6) With approval of the State's Attorney of the county
23 in which it is to occur, recording or listening with the aid of
24 any device to any conversation where a law enforcement officer,
25 or any person acting at the direction of law enforcement, is a
26 party to the conversation and has consented to it being

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

19 (h) Recordings made simultaneously with a video recording
20 of an oral conversation between a peace officer, who has
21 identified his or her office, and a person stopped for an
22 investigation of an offense under the Illinois Vehicle Code, or
23 any recordings made simultaneously with a video recording of
24 any conversations occurring upon a peace officer responding to
25 a scene in the investigation of any criminal offense under
26 Illinois law;

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

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

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

24 (ii) the monitoring is used with the consent of at
25 least one person who is an active party to the marketing or
26 opinion research conversation or telephone solicitation

1 conversation being monitored.

2 No communication or conversation or any part, portion, or
3 aspect of the communication or conversation made, acquired, or
4 obtained, directly or indirectly, under this exemption (j), may
5 be, directly or indirectly, furnished to any law enforcement
6 officer, agency, or official for any purpose or used in any
7 inquiry or investigation, or used, directly or indirectly, in
8 any administrative, judicial, or other proceeding, or divulged
9 to any third party.

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

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

26 Business entities that use a telephone monitoring or

1 telephone recording system pursuant to this exemption (j) shall
2 provide their employees or agents with access to personal-only
3 telephone lines which may be pay telephones, that are not
4 subject to telephone monitoring or telephone 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; or

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

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

22 (k) Electronic recordings, including but not limited to, a
23 motion picture, videotape, digital, or other visual or audio
24 recording, made of a custodial interrogation of an individual
25 at a police station or other place of detention by a law
26 enforcement officer under Section 5-401.5 of the Juvenile Court

1 Act of 1987 or Section 103-2.1 of the Code of Criminal
2 Procedure of 1963;

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

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

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

1 (n) ~~(m)~~ Recording or listening to an audio transmission
2 from a microphone placed by a person under the authority of a
3 law enforcement agency inside a bait car surveillance vehicle
4 while simultaneously capturing a photographic or video image.
5 (Source: P.A. 94-556, eff. 9-11-05; 95-258, eff. 1-1-08;
6 95-352, eff. 8-23-07; 95-463, eff. 6-1-08; revised 11-19-07.)