

SB3391



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3391

Introduced 2/10/2010, by Sen. John J. Millner

SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-3

Amends the Criminal Code of 1961. Provides that recording or listening with the aid of any device to incoming telephone calls of phone lines publicly listed or advertised as telephone answering services and utilized by business or professional organizations for such purposes is exempt from an eavesdropping violation. Provides that if such recordings contain information relevant to a criminal investigation, they must be turned over to local law enforcement authorities within 24 hours from the time of such recording or as soon as practicable and shall not be otherwise disseminated. Provides that failure on the part of the individual or business operating any such recording or listening device to comply with these requirements shall eliminate any civil or criminal immunity conferred upon that individual or business by the operation of the eavesdropping exemption provisions. Effective immediately.

LRB096 17966 RLC 33335 b

A BILL FOR

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 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

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

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

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

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

1 law enforcement officer or any person acting at the direction
2 of law enforcement, in the course of an investigation of a
3 forcible felony, a felony violation of the Illinois Controlled
4 Substances Act, a felony violation of the Cannabis Control Act,
5 a felony violation of the Methamphetamine Control and Community
6 Protection Act, any "streetgang related" or "gang-related"
7 felony as those terms are defined in the Illinois Streetgang
8 Terrorism Omnibus Prevention Act, or any felony offense
9 involving any weapon listed in paragraphs (1) through (11) of
10 subsection (a) of Section 24-1 of this Code. Any recording or
11 evidence derived as the result of this exemption shall be
12 inadmissible in any proceeding, criminal, civil or
13 administrative, except (i) where a party to the conversation
14 suffers great bodily injury or is killed during such
15 conversation, or (ii) when used as direct impeachment of a
16 witness concerning matters contained in the interception or
17 recording. The Director of the Department of State Police shall
18 issue regulations as are necessary concerning the use of
19 devices, retention of tape recordings, and reports regarding
20 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, aggravated child pornography, indecent
3 solicitation of a child, child abduction, luring of a minor,
4 sexual exploitation of a child, predatory criminal sexual
5 assault of a child, aggravated criminal sexual abuse in which
6 the victim of the offense was at the time of the commission of
7 the offense under 18 years of age, criminal sexual abuse by
8 force or threat of force in which the victim of the offense was
9 at the time of the commission of the offense under 18 years of
10 age, or aggravated criminal sexual assault in which the victim
11 of the offense was at the time of the commission of the offense
12 under 18 years of age. In all such cases, an application for an
13 order approving the previous or continuing use of an
14 eavesdropping device must be made within 48 hours of the
15 commencement of such use. In the absence of such an order, or
16 upon its denial, any continuing use shall immediately
17 terminate. The Director of State Police shall issue rules as
18 are necessary concerning the use of devices, retention of
19 recordings, and reports regarding their use. Any recording or
20 evidence obtained or derived in the course of an investigation
21 of child pornography, aggravated child pornography, indecent
22 solicitation of a child, child abduction, luring of a minor,
23 sexual exploitation of a child, predatory criminal sexual
24 assault of a child, aggravated criminal sexual abuse in which
25 the victim of the offense was at the time of the commission of
26 the offense under 18 years of age, criminal sexual abuse by

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

23 (h) Recordings made simultaneously with the use of an
24 in-car video camera recording of an oral conversation between a
25 uniformed peace officer, who has identified his or her office,
26 and a person in the presence of the peace officer whenever (i)

1 an officer assigned a patrol vehicle is conducting an
2 enforcement stop; or (ii) patrol vehicle emergency lights are
3 activated or would otherwise be activated if not for the need
4 to conceal the presence of law enforcement.

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

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

19 (h-10) Recordings made simultaneously with a video camera
20 recording during the use of a taser or similar weapon or device
21 by a peace officer if the weapon or device is equipped with
22 such camera;

23 (h-15) Recordings made under subsection (h), (h-5), or
24 (h-10) shall be retained by the law enforcement agency that
25 employs the peace officer who made the recordings for a storage
26 period of 90 days, unless the recordings are made as a part of

1 an arrest or the recordings are deemed evidence in any
2 criminal, civil, or administrative proceeding and then the
3 recordings must only be destroyed upon a final disposition and
4 an order from the court. Under no circumstances shall any
5 recording be altered or erased prior to the expiration of the
6 designated storage period. Upon completion of the storage
7 period, the recording medium may be erased and reissued for
8 operational use;

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

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

25 (i) the monitoring is used for the purpose of service
26 quality control of marketing or opinion research or

1 telephone solicitation, the education or training of
2 employees or contractors engaged in marketing or opinion
3 research or telephone solicitation, or internal research
4 related to marketing or opinion research or telephone
5 solicitation; and

6 (ii) the monitoring is used with the consent of at
7 least one person who is an active party to the marketing or
8 opinion research conversation or telephone solicitation
9 conversation being monitored.

10 No communication or conversation or any part, portion, or
11 aspect of the communication or conversation made, acquired, or
12 obtained, directly or indirectly, under this exemption (j), may
13 be, directly or indirectly, furnished to any law enforcement
14 officer, agency, or official for any purpose or used in any
15 inquiry or investigation, or used, directly or indirectly, in
16 any administrative, judicial, or other proceeding, or divulged
17 to any third party.

18 When recording or listening authorized by this subsection
19 (j) on telephone lines used for marketing or opinion research
20 or telephone solicitation purposes results in recording or
21 listening to a conversation that does not relate to marketing
22 or opinion research or telephone solicitation; the person
23 recording or listening shall, immediately upon determining
24 that the conversation does not relate to marketing or opinion
25 research or telephone solicitation, terminate the recording or
26 listening and destroy any such recording as soon as is

1 practicable.

2 Business entities that use a telephone monitoring or
3 telephone recording system pursuant to this exemption (j) shall
4 provide current and prospective employees with notice that the
5 monitoring or recordings may occur during the course of their
6 employment. The notice shall include prominent signage
7 notification within the workplace.

8 Business entities that use a telephone monitoring or
9 telephone recording system pursuant to this exemption (j) shall
10 provide their employees or agents with access to personal-only
11 telephone lines which may be pay telephones, that are not
12 subject to telephone monitoring or telephone recording.

13 For the purposes of this subsection (j), "telephone
14 solicitation" means a communication through the use of a
15 telephone by live operators:

- 16 (i) soliciting the sale of goods or services;
17 (ii) receiving orders for the sale of goods or
18 services;
19 (iii) assisting in the use of goods or services; or
20 (iv) engaging in the solicitation, administration, or
21 collection of bank or retail credit accounts.

22 For the purposes of this subsection (j), "marketing or
23 opinion research" means a marketing or opinion research
24 interview conducted by a live telephone interviewer engaged by
25 a corporation or other business entity whose principal business
26 is the design, conduct, and analysis of polls and surveys

1 measuring the opinions, attitudes, and responses of
2 respondents toward products and services, or social or
3 political issues, or both;

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

11 (l) Recording the interview or statement of any person when
12 the person knows that the interview is being conducted by a law
13 enforcement officer or prosecutor and the interview takes place
14 at a police station that is currently participating in the
15 Custodial Interview Pilot Program established under the
16 Illinois Criminal Justice Information Act;

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

1 posted on the door of and inside the school bus.

2 Recordings made pursuant to this subsection (m) shall be
3 confidential records and may only be used by school officials
4 (or their designees) and law enforcement personnel for
5 investigations, school disciplinary actions and hearings,
6 proceedings under the Juvenile Court Act of 1987, and criminal
7 prosecutions, related to incidents occurring in or around the
8 school bus;

9 (n) Recording or listening to an audio transmission from a
10 microphone placed by a person under the authority of a law
11 enforcement agency inside a bait car surveillance vehicle while
12 simultaneously capturing a photographic or video image; ~~and~~

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

19 (p) Recording or listening with the aid of any device to
20 incoming telephone calls of phone lines publicly listed or
21 advertised as telephone answering services and utilized by
22 business or professional organizations for such purposes. If
23 such recordings contain information relevant to a criminal
24 investigation, they must be turned over to local law
25 enforcement authorities within 24 hours from the time of such
26 recording or as soon as practicable and shall not be otherwise

1 disseminated. Failure on the part of the individual or business
2 operating any such recording or listening device to comply with
3 the requirements of this subsection shall eliminate any civil
4 or criminal immunity conferred upon that individual or business
5 by the operation of this Section.

6 (Source: P.A. 95-258, eff. 1-1-08; 95-352, eff. 8-23-07;
7 95-463, eff. 6-1-08; 95-876, eff. 8-21-08; 96-425, eff.
8 8-13-09; 96-547, eff. 1-1-10; 96-643, eff. 1-1-10; 96-670, eff.
9 8-25-09; revised 10-9-09.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.