

# HB3088



## 97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

**HB3088**

Introduced 2/23/2011, by Rep. Arthur Turner

### SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-3

Amends the Criminal Code of 1961. Makes a technical change in the Section concerning exemptions from an eavesdropping violation.

LRB097 09742 RLC 49879 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  
8 ~~shall~~ be 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 offense of involuntary servitude,  
4 involuntary sexual servitude of a minor, or trafficking in  
5 persons for forced labor or services under Section 10-9 of this  
6 Code, an offense involving prostitution, solicitation of a  
7 sexual act, or pandering, a felony violation of the Illinois  
8 Controlled Substances Act, a felony violation of the Cannabis  
9 Control Act, a felony violation of the Methamphetamine Control  
10 and Community Protection Act, any "streetgang related" or  
11 "gang-related" felony as those terms are defined in the  
12 Illinois Streetgang Terrorism Omnibus Prevention Act, or any  
13 felony offense involving any weapon listed in paragraphs (1)  
14 through (11) of subsection (a) of Section 24-1 of this Code.  
15 Any recording or evidence derived as the result of this  
16 exemption shall be inadmissible in any proceeding, criminal,  
17 civil or administrative, except (i) where a party to the  
18 conversation suffers great bodily injury or is killed during  
19 such conversation, or (ii) when used as direct impeachment of a  
20 witness concerning matters contained in the interception or  
21 recording. The Director of the Department of State Police shall  
22 issue regulations as are necessary concerning the use of  
23 devices, retention of tape recordings, and reports regarding  
24 their use;

25 (g-5) With approval of the State's Attorney of the county  
26 in which it is to occur, recording or listening with the aid of

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

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

21 This subsection (g-5) is inoperative on and after January  
22 1, 2005. No conversations recorded or monitored pursuant to  
23 this subsection (g-5) shall be inadmissible in a court of law  
24 by virtue of the repeal of this subsection (g-5) on January 1,  
25 2005;

26 (g-6) With approval of the State's Attorney of the county

1 in which it is to occur, recording or listening with the aid of  
2 any device to any conversation where a law enforcement officer,  
3 or any person acting at the direction of law enforcement, is a  
4 party to the conversation and has consented to it being  
5 intercepted or recorded in the course of an investigation of  
6 involuntary servitude, involuntary sexual servitude of a  
7 minor, trafficking in persons for forced labor or services,  
8 child pornography, aggravated child pornography, indecent  
9 solicitation of a child, child abduction, luring of a minor,  
10 sexual exploitation of a child, predatory criminal sexual  
11 assault of a child, aggravated criminal sexual abuse in which  
12 the victim of the offense was at the time of the commission of  
13 the offense under 18 years of age, criminal sexual abuse by  
14 force or threat of force in which the victim of the offense was  
15 at the time of the commission of the offense under 18 years of  
16 age, or aggravated criminal sexual assault in which the victim  
17 of the offense was at the time of the commission of the offense  
18 under 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, or  
22 upon its denial, any continuing use shall immediately  
23 terminate. The Director of State Police shall issue rules as  
24 are necessary concerning the use of devices, retention of  
25 recordings, and reports regarding their use. Any recording or  
26 evidence obtained or derived in the course of an investigation

1 of involuntary servitude, involuntary sexual servitude of a  
2 minor, trafficking in persons for forced labor or services,  
3 child pornography, aggravated child pornography, indecent  
4 solicitation of a child, child abduction, luring of a minor,  
5 sexual exploitation of a child, predatory criminal sexual  
6 assault of a child, aggravated criminal sexual abuse in which  
7 the victim of the offense was at the time of the commission of  
8 the offense under 18 years of age, criminal sexual abuse by  
9 force or threat of force in which the victim of the offense was  
10 at the time of the commission of the offense under 18 years of  
11 age, or aggravated criminal sexual assault in which the victim  
12 of the offense was at the time of the commission of the offense  
13 under 18 years of age shall, upon motion of the State's  
14 Attorney or Attorney General prosecuting any case involving  
15 involuntary servitude, involuntary sexual servitude of a  
16 minor, trafficking in persons for forced labor or services,  
17 child pornography, aggravated child pornography, indecent  
18 solicitation of a child, child abduction, luring of a minor,  
19 sexual exploitation of a child, predatory criminal sexual  
20 assault of a child, aggravated criminal sexual abuse in which  
21 the victim of the offense was at the time of the commission of  
22 the offense under 18 years of age, criminal sexual abuse by  
23 force or threat of force in which the victim of the offense was  
24 at the time of the commission of the offense under 18 years of  
25 age, or aggravated criminal sexual assault in which the victim  
26 of the offense was at the time of the commission of the offense

1 under 18 years of age, be reviewed in camera with notice to all  
2 parties present by the court presiding over the criminal case,  
3 and, if ruled by the court to be relevant and otherwise  
4 admissible, it shall be admissible at the trial of the criminal  
5 case. Absent such a ruling, any such recording or evidence  
6 shall not be admissible at the trial of the criminal case;

7 (h) Recordings made simultaneously with the use of an  
8 in-car video camera recording of an oral conversation between a  
9 uniformed peace officer, who has identified his or her office,  
10 and a person in the presence of the peace officer whenever (i)  
11 an officer assigned a patrol vehicle is conducting an  
12 enforcement stop; or (ii) patrol vehicle emergency lights are  
13 activated or would otherwise be activated if not for the need  
14 to conceal the presence of law enforcement.

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

22 (h-5) Recordings of utterances made by a person while in  
23 the presence of a uniformed peace officer and while an occupant  
24 of a police vehicle including, but not limited to, (i)  
25 recordings made simultaneously with the use of an in-car video  
26 camera and (ii) recordings made in the presence of the peace



1 officer utilizing video or audio systems, or both, authorized  
2 by the law enforcement agency;

3 (h-10) Recordings made simultaneously with a video camera  
4 recording during the use of a taser or similar weapon or device  
5 by a peace officer if the weapon or device is equipped with  
6 such camera;

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

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

1           (j) The use of a telephone monitoring device by either (1)  
2 a corporation or other business entity engaged in marketing or  
3 opinion research or (2) a corporation or other business entity  
4 engaged in telephone solicitation, as defined in this  
5 subsection, to record or listen to oral telephone solicitation  
6 conversations or marketing or opinion research conversations  
7 by an employee of the corporation or other business entity  
8 when:

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

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

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

1 to any third party.

2 When recording or listening authorized by this subsection  
3 (j) on telephone lines used for marketing or opinion research  
4 or telephone solicitation purposes results in recording or  
5 listening to a conversation that does not relate to marketing  
6 or opinion research or telephone solicitation; the person  
7 recording or listening shall, immediately upon determining  
8 that the conversation does not relate to marketing or opinion  
9 research or 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) shall  
14 provide current and prospective employees with notice that the  
15 monitoring or recordings may occur during the course of their  
16 employment. The notice shall include prominent signage  
17 notification within the workplace.

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

23 For the purposes of this subsection (j), "telephone  
24 solicitation" means a communication through the use of a  
25 telephone by live operators:

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

1           (ii) receiving orders for the sale of goods or  
2           services;

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

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

6           For the purposes of this subsection (j), "marketing or  
7           opinion research" means a marketing or opinion research  
8           interview conducted by a live telephone interviewer engaged by  
9           a corporation or other business entity whose principal business  
10          is the design, conduct, and analysis of polls and surveys  
11          measuring the opinions, attitudes, and responses of  
12          respondents toward products and services, or social or  
13          political issues, or both;

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

21          (l) Recording the interview or statement of any person when  
22          the person knows that the interview is being conducted by a law  
23          enforcement officer or prosecutor and the interview takes place  
24          at a police station that is currently participating in the  
25          Custodial Interview Pilot Program established under the  
26          Illinois Criminal Justice Information Act;

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

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

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

23 (o) The use of an eavesdropping camera or audio device  
24 during an ongoing hostage or barricade situation by a law  
25 enforcement officer or individual acting on behalf of a law  
26 enforcement officer when the use of such device is necessary to

1 protect the safety of the general public, hostages, or law  
2 enforcement officers or anyone acting on their behalf; and

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

11 (Source: P.A. 95-258, eff. 1-1-08; 95-352, eff. 8-23-07;  
12 95-463, eff. 6-1-08; 95-876, eff. 8-21-08; 96-425, eff.  
13 8-13-09; 96-547, eff. 1-1-10; 96-643, eff. 1-1-10; 96-670, eff.  
14 8-25-09; 96-1000, eff. 7-2-10; 96-1425, eff. 1-1-11; 96-1464,  
15 eff. 8-20-10; revised 9-16-10.)