



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3944

Introduced 1/10/2012, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-3

Amends the Criminal Code of 1961. Exempts from an eavesdropping violation the recording of a peace officer who is performing a public duty in a public place and speaking at a volume audible to the unassisted human ear. Provides that for the purposes of the telephone solicitation and marketing and opinion research exception to the eavesdropping statute, permits a non-employee to record the conversation if the corporation or other business entity announces it may record or listen to a telephone conversation with a non-employee.

LRB097 13353 RLC 58791 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 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 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 If a corporation or other business entity announces it may
24 record or listen to a telephone conversation with a
25 non-employee under this subsection (j), the non-employee may
26 record the conversation as well.

1 For the purposes of this subsection (j), "telephone
2 solicitation" means a communication through the use of a
3 telephone by live operators:

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

5 (ii) receiving orders for the sale of goods or
6 services;

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

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

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

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

25 (l) Recording the interview or statement of any person when
26 the person knows that the interview is being conducted by a law

1 enforcement officer or prosecutor and the interview takes place
2 at a police station that is currently participating in the
3 Custodial Interview Pilot Program established under the
4 Illinois Criminal Justice Information Act;

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

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

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

1 (o) The use of an eavesdropping camera or audio device
2 during an ongoing hostage or barricade situation by a law
3 enforcement officer or individual acting on behalf of a law
4 enforcement officer when the use of such device is necessary to
5 protect the safety of the general public, hostages, or law
6 enforcement officers or anyone acting on their behalf; ~~and~~

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

15 (q) Recording of a peace officer who is performing a public
16 duty in a public place and speaking at a volume audible to the
17 unassisted human ear. For purposes of this subsection (q),
18 "public place" means any place to which the public has access
19 and includes, but is not limited to, streets, sidewalks, parks,
20 and highways (including inside motor vehicles), and the common
21 areas of public and private facilities and buildings.

22 (Source: P.A. 96-425, eff. 8-13-09; 96-547, eff. 1-1-10;
23 96-643, eff. 1-1-10; 96-670, eff. 8-25-09; 96-1000, eff.
24 7-2-10; 96-1425, eff. 1-1-11; 96-1464, eff. 8-20-10; 97-333,
25 eff. 8-12-11.)