



Rep. Elaine Nekritz

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LRB097 13353 RLC 65444 a

1 AMENDMENT TO HOUSE BILL 3944

2 AMENDMENT NO. _____. Amend House Bill 3944 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 1961 is amended by
5 changing 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

1 it be a broadcast or recorded for the purpose of later
2 broadcasts of any function where the public is in attendance
3 and the conversations are overheard incidental to the main
4 purpose for which such broadcasts are then being made;

5 (d) Recording or listening with the aid of any device to
6 any emergency communication made in the normal course of
7 operations by any federal, state or local law enforcement
8 agency or institutions dealing in emergency services,
9 including, but not limited to, hospitals, clinics, ambulance
10 services, fire fighting agencies, any public utility,
11 emergency repair facility, civilian defense establishment or
12 military installation;

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

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

1 (g) With prior notification to the State's Attorney of the
2 county in which it is to occur, recording or listening with the
3 aid of any device to any conversation where a law enforcement
4 officer, or any person acting at the direction of law
5 enforcement, is a party to the conversation and has consented
6 to it being intercepted or recorded under circumstances where
7 the use of the device is necessary for the protection of the
8 law enforcement officer or any person acting at the direction
9 of law enforcement, in the course of an investigation of a
10 forcible felony, a felony offense of involuntary servitude,
11 involuntary sexual servitude of a minor, or trafficking in
12 persons for forced labor or services under Section 10-9 of this
13 Code, an offense involving prostitution, solicitation of a
14 sexual act, or pandering, a felony violation of the Illinois
15 Controlled Substances Act, a felony violation of the Cannabis
16 Control Act, a felony violation of the Methamphetamine Control
17 and Community Protection Act, any "streetgang related" or
18 "gang-related" felony as those terms are defined in the
19 Illinois Streetgang Terrorism Omnibus Prevention Act, or any
20 felony offense involving any weapon listed in paragraphs (1)
21 through (11) of subsection (a) of Section 24-1 of this Code.
22 Any recording or evidence derived as the result of this
23 exemption shall be inadmissible in any proceeding, criminal,
24 civil or administrative, except (i) where a party to the
25 conversation suffers great bodily injury or is killed during
26 such conversation, or (ii) when used as direct impeachment of a

1 witness concerning matters contained in the interception or
2 recording. The Director of the Department of State Police shall
3 issue regulations as are necessary concerning the use of
4 devices, retention of tape recordings, and reports regarding
5 their use;

6 (g-5) With approval of the State's Attorney of the county
7 in which it is to occur, recording or listening with the aid of
8 any device to any conversation where a law enforcement officer,
9 or any person acting at the direction of law enforcement, is a
10 party to the conversation and has consented to it being
11 intercepted or recorded in the course of an investigation of
12 any offense defined in Article 29D of this Code. In all such
13 cases, an application for an order approving the previous or
14 continuing use of an eavesdropping device must be made within
15 48 hours of the commencement of such use. In the absence of
16 such an order, or upon its denial, any continuing use shall
17 immediately terminate. The Director of State Police shall issue
18 rules as are necessary concerning the use of devices, retention
19 of tape recordings, and reports regarding their use.

20 Any recording or evidence obtained or derived in the course
21 of an investigation of any offense defined in Article 29D of
22 this Code shall, upon motion of the State's Attorney or
23 Attorney General prosecuting any violation of Article 29D, be
24 reviewed in camera with notice to all parties present by the
25 court presiding over the criminal case, and, if ruled by the
26 court to be relevant and otherwise admissible, it shall be

1 admissible at the trial of the criminal case.

2 This subsection (g-5) is inoperative on and after January
3 1, 2005. No conversations recorded or monitored pursuant to
4 this subsection (g-5) shall be inadmissible in a court of law
5 by virtue of the repeal of this subsection (g-5) on January 1,
6 2005;

7 (g-6) With approval of the State's Attorney of the county
8 in which it is to occur, recording or listening with the aid of
9 any device to any conversation where a law enforcement officer,
10 or any person acting at the direction of law enforcement, is a
11 party to the conversation and has consented to it being
12 intercepted or recorded in the course of an investigation of
13 involuntary servitude, involuntary sexual servitude of a
14 minor, trafficking in persons for forced labor or services,
15 child pornography, aggravated child pornography, indecent
16 solicitation of a child, child abduction, luring of a minor,
17 sexual exploitation of a child, predatory criminal sexual
18 assault of a child, aggravated criminal sexual abuse in which
19 the victim of the offense was at the time of the commission of
20 the offense under 18 years of age, criminal sexual abuse by
21 force or threat of force in which the victim of the offense was
22 at the time of the commission of the offense under 18 years of
23 age, or aggravated criminal sexual assault in which the victim
24 of the offense was at the time of the commission of the offense
25 under 18 years of age. In all such cases, an application for an
26 order approving the previous or continuing use of an

1 eavesdropping device must be made within 48 hours of the
2 commencement of such use. In the absence of such an order, or
3 upon its denial, any continuing use shall immediately
4 terminate. The Director of State Police shall issue rules as
5 are necessary concerning the use of devices, retention of
6 recordings, and reports regarding their use. Any recording or
7 evidence obtained or derived in the course of an investigation
8 of involuntary servitude, involuntary sexual servitude of a
9 minor, trafficking in persons for forced labor or services,
10 child pornography, aggravated child pornography, indecent
11 solicitation of a child, child abduction, luring of a minor,
12 sexual exploitation of a child, predatory criminal sexual
13 assault of a child, aggravated criminal sexual abuse in which
14 the victim of the offense was at the time of the commission of
15 the offense under 18 years of age, criminal sexual abuse by
16 force or threat of force in which the victim of the offense was
17 at the time of the commission of the offense under 18 years of
18 age, or aggravated criminal sexual assault in which the victim
19 of the offense was at the time of the commission of the offense
20 under 18 years of age shall, upon motion of the State's
21 Attorney or Attorney General prosecuting any case involving
22 involuntary servitude, involuntary sexual servitude of a
23 minor, trafficking in persons for forced labor or services,
24 child pornography, aggravated child pornography, indecent
25 solicitation of a child, child abduction, luring of a minor,
26 sexual exploitation of a child, predatory criminal sexual

1 assault of a child, aggravated criminal sexual abuse in which
2 the victim of the offense was at the time of the commission of
3 the offense under 18 years of age, criminal sexual abuse by
4 force or threat of force in which the victim of the offense was
5 at the time of the commission of the offense under 18 years of
6 age, or aggravated criminal sexual assault in which the victim
7 of the offense was at the time of the commission of the offense
8 under 18 years of age, be reviewed in camera with notice to all
9 parties present by the court presiding over the criminal case,
10 and, if ruled by the court to be relevant and otherwise
11 admissible, it shall be admissible at the trial of the criminal
12 case. Absent such a ruling, any such recording or evidence
13 shall not be admissible at the trial of the criminal case;

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

22 For the purposes of this subsection (h), "enforcement stop"
23 means an action by a law enforcement officer in relation to
24 enforcement and investigation duties, including but not
25 limited to, traffic stops, pedestrian stops, abandoned vehicle
26 contacts, motorist assists, commercial motor vehicle stops,

1 roadside safety checks, requests for identification, or
2 responses to requests for emergency assistance;

3 (h-5) Recordings of utterances made by a person while in
4 the presence of a uniformed peace officer and while an occupant
5 of a police vehicle including, but not limited to, (i)
6 recordings made simultaneously with the use of an in-car video
7 camera and (ii) recordings made in the presence of the peace
8 officer utilizing video or audio systems, or both, authorized
9 by the law enforcement agency;

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

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

26 (i) Recording of a conversation made by or at the request

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

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

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

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

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

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

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

25 Business entities that use a telephone monitoring or
26 telephone recording system pursuant to this exemption (j) shall

1 provide their employees or agents with access to personal-only
2 telephone lines which may be pay telephones, that are not
3 subject to telephone monitoring or telephone recording.

4 For the purposes of this subsection (j), "telephone
5 solicitation" means a communication through the use of a
6 telephone by live operators:

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

8 (ii) receiving orders for the sale of goods or
9 services;

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

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

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

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

1 Procedure of 1963;

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

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

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

26 (n) Recording or listening to an audio transmission from a

1 microphone placed by a person under the authority of a law
2 enforcement agency inside a bait car surveillance vehicle while
3 simultaneously capturing a photographic or video image;

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

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

18 (q) A person who is not a law enforcement officer nor
19 acting at the direction of a law enforcement officer may record
20 the conversation of a law enforcement officer who is performing
21 a public duty in a public place and any other person who is
22 having a conversation with that law enforcement officer if the
23 conversation is at a volume audible to the unassisted ear of
24 the person who is making the recording. For purposes of this
25 subsection (q), "public place" means any place to which the
26 public has access and includes, but is not limited to, streets,

1 sidewalks, parks, and highways (including inside motor
2 vehicles), and the common areas of public and private
3 facilities and buildings.

4 (Source: P.A. 96-425, eff. 8-13-09; 96-547, eff. 1-1-10;
5 96-643, eff. 1-1-10; 96-670, eff. 8-25-09; 96-1000, eff.
6 7-2-10; 96-1425, eff. 1-1-11; 96-1464, eff. 8-20-10; 97-333,
7 eff. 8-12-11.)

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.".