



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB2446

by Rep. Chad Hays

SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-3

Amends the Criminal Code of 2012. Exempts from an eavesdropping violation recordings made simultaneously with the use of an in-car video camera or officer-worn video camera recording of an oral conversation between a uniformed peace officer, who has identified his or her office, and a person in the presence of the peace officer whenever (i) an officer is conducting an enforcement stop; or (ii) patrol vehicle emergency lights are activated or would otherwise be activated if not for the need to conceal the presence of law enforcement.

LRB098 03992 RLC 37965 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 2012 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 under Section 10-9 of this Code, an offense involving
6 prostitution, solicitation of a sexual act, or pandering, a
7 felony violation of the Illinois Controlled Substances Act, a
8 felony violation of the Cannabis Control Act, a felony
9 violation of the Methamphetamine Control and Community
10 Protection Act, any "streetgang related" or "gang-related"
11 felony as those terms are defined in the Illinois Streetgang
12 Terrorism Omnibus Prevention Act, or any felony offense
13 involving any weapon listed in paragraphs (1) through (11) of
14 subsection (a) of Section 24-1 of this Code. Any recording or
15 evidence derived as the result of this exemption shall be
16 inadmissible in any proceeding, criminal, civil or
17 administrative, except (i) where a party to the conversation
18 suffers great bodily injury or is killed during such
19 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, child pornography, aggravated
8 child pornography, indecent solicitation of a child, child
9 abduction, luring of a minor, sexual exploitation of a child,
10 predatory criminal sexual assault of a child, aggravated
11 criminal sexual abuse in which the victim of the offense was at
12 the time of the commission of the offense under 18 years of
13 age, criminal sexual abuse by force or threat of force in which
14 the victim of the offense was at the time of the commission of
15 the offense under 18 years of age, or aggravated criminal
16 sexual assault in which the victim of the offense was at the
17 time of the commission of the offense under 18 years of age. In
18 all such cases, an application for an order approving the
19 previous or continuing use of an eavesdropping device must be
20 made within 48 hours of the commencement of such use. In the
21 absence of such an order, or upon its denial, any continuing
22 use shall immediately terminate. The Director of State Police
23 shall issue rules as are necessary concerning the use of
24 devices, retention of recordings, and reports regarding their
25 use. Any recording or evidence obtained or derived in the
26 course of an investigation of involuntary servitude,

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

1 parties present by the court presiding over the criminal case,
2 and, if ruled by the court to be relevant and otherwise
3 admissible, it shall be admissible at the trial of the criminal
4 case. Absent such a ruling, any such recording or evidence
5 shall not be admissible at the trial of the criminal case;

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

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; and

11 (q) (1) With prior request to and verbal approval of the
12 State's Attorney of the county in which the conversation is
13 anticipated to occur, recording or listening with the aid of an
14 eavesdropping device to a conversation in which a law
15 enforcement officer, or any person acting at the direction of a
16 law enforcement officer, is a party to the conversation and has
17 consented to the conversation being intercepted or recorded in
18 the course of an investigation of a drug offense. The State's
19 Attorney may grant this verbal approval only after determining
20 that reasonable cause exists to believe that a drug offense
21 will be committed by a specified individual or individuals
22 within a designated period of time.

23 (2) Request for approval. To invoke the exception contained
24 in this subsection (q), a law enforcement officer shall make a
25 written or verbal request for approval to the appropriate
26 State's Attorney. This request for approval shall include

1 whatever information is deemed necessary by the State's
2 Attorney but shall include, at a minimum, the following
3 information about each specified individual whom the law
4 enforcement officer believes will commit a drug offense:

5 (A) his or her full or partial name, nickname or alias;

6 (B) a physical description; or

7 (C) failing either (A) or (B) of this paragraph (2),
8 any other supporting information known to the law
9 enforcement officer at the time of the request that gives
10 rise to reasonable cause to believe the individual will
11 commit a drug offense.

12 (3) Limitations on verbal approval. Each verbal approval by
13 the State's Attorney under this subsection (q) shall be limited
14 to:

15 (A) a recording or interception conducted by a
16 specified law enforcement officer or person acting at the
17 direction of a law enforcement officer;

18 (B) recording or intercepting conversations with the
19 individuals specified in the request for approval,
20 provided that the verbal approval shall be deemed to
21 include the recording or intercepting of conversations
22 with other individuals, unknown to the law enforcement
23 officer at the time of the request for approval, who are
24 acting in conjunction with or as co-conspirators with the
25 individuals specified in the request for approval in the
26 commission of a drug offense;

1 (C) a reasonable period of time but in no event longer
2 than 24 consecutive hours.

3 (4) Admissibility of evidence. No part of the contents of
4 any wire, electronic, or oral communication that has been
5 recorded or intercepted as a result of this exception may be
6 received in evidence in any trial, hearing, or other proceeding
7 in or before any court, grand jury, department, officer,
8 agency, regulatory body, legislative committee, or other
9 authority of this State, or a political subdivision of the
10 State, other than in a prosecution of:

11 (A) a drug offense;

12 (B) a forcible felony committed directly in the course
13 of the investigation of a drug offense for which verbal
14 approval was given to record or intercept a conversation
15 under this subsection (q); or

16 (C) any other forcible felony committed while the
17 recording or interception was approved in accordance with
18 this Section (q), but for this specific category of
19 prosecutions, only if the law enforcement officer or person
20 acting at the direction of a law enforcement officer who
21 has consented to the conversation being intercepted or
22 recorded suffers great bodily injury or is killed during
23 the commission of the charged forcible felony.

24 (5) Compliance with the provisions of this subsection is a
25 prerequisite to the admissibility in evidence of any part of
26 the contents of any wire, electronic or oral communication that

1 has been intercepted as a result of this exception, but nothing
2 in this subsection shall be deemed to prevent a court from
3 otherwise excluding the evidence on any other ground, nor shall
4 anything in this subsection be deemed to prevent a court from
5 independently reviewing the admissibility of the evidence for
6 compliance with the Fourth Amendment to the U.S. Constitution
7 or with Article I, Section 6 of the Illinois Constitution.

8 (6) Use of recordings or intercepts unrelated to drug
9 offenses. Whenever any wire, electronic, or oral communication
10 has been recorded or intercepted as a result of this exception
11 that is not related to a drug offense or a forcible felony
12 committed in the course of a drug offense, no part of the
13 contents of the communication and evidence derived from the
14 communication may be received in evidence in any trial,
15 hearing, or other proceeding in or before any court, grand
16 jury, department, officer, agency, regulatory body,
17 legislative committee, or other authority of this State, or a
18 political subdivision of the State, nor may it be publicly
19 disclosed in any way.

20 (7) Definitions. For the purposes of this subsection (q)
21 only:

22 "Drug offense" includes and is limited to a felony
23 violation of one of the following: (A) the Illinois
24 Controlled Substances Act, (B) the Cannabis Control Act,
25 and (C) the Methamphetamine Control and Community
26 Protection Act.

1 "Forcible felony" includes and is limited to those
2 offenses contained in Section 2-8 of the Criminal Code of
3 1961 as of the effective date of this amendatory Act of the
4 97th General Assembly, and only as those offenses have been
5 defined by law or judicial interpretation as of that date.

6 "State's Attorney" includes and is limited to the
7 State's Attorney or an assistant State's Attorney
8 designated by the State's Attorney to provide verbal
9 approval to record or intercept conversations under this
10 subsection (q).

11 (8) Sunset. This subsection (q) is inoperative on and after
12 January 1, 2015. No conversations intercepted pursuant to this
13 subsection (q), while operative, shall be inadmissible in a
14 court of law by virtue of the inoperability of this subsection
15 (q) on January 1, 2015.

16 (Source: P.A. 96-425, eff. 8-13-09; 96-547, eff. 1-1-10;
17 96-643, eff. 1-1-10; 96-670, eff. 8-25-09; 96-1000, eff.
18 7-2-10; 96-1425, eff. 1-1-11; 96-1464, eff. 8-20-10; 97-333,
19 eff. 8-12-11; 97-846, eff. 1-1-13; 97-897, eff. 1-1-13; revised
20 8-23-12.)