



Rep. Chad Hays

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LRB098 03992 RLC 44167 a

1 AMENDMENT TO HOUSE BILL 2446

2 AMENDMENT NO. _____. Amend House Bill 2446 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 2012 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 under Section 10-9 of this Code, an offense involving
13 prostitution, solicitation of a sexual act, or pandering, a
14 felony violation of the Illinois Controlled Substances Act, a
15 felony violation of the Cannabis Control Act, a felony
16 violation of the Methamphetamine Control and Community
17 Protection Act, any "streetgang related" or "gang-related"
18 felony as those terms are defined in the Illinois Streetgang
19 Terrorism Omnibus Prevention Act, or any felony offense
20 involving any weapon listed in paragraphs (1) through (11) of
21 subsection (a) of Section 24-1 of this Code. Any recording or
22 evidence derived as the result of this exemption shall be
23 inadmissible in any proceeding, criminal, civil or
24 administrative, except (i) where a party to the conversation
25 suffers great bodily injury or is killed during such
26 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, child pornography, aggravated
15 child pornography, indecent solicitation of a child, child
16 abduction, luring of a minor, sexual exploitation of a child,
17 predatory criminal sexual assault of a child, aggravated
18 criminal sexual abuse in which the victim of the offense was at
19 the time of the commission of the offense under 18 years of
20 age, criminal sexual abuse by force or threat of force in which
21 the victim of the offense was at the time of the commission of
22 the offense under 18 years of age, or aggravated criminal
23 sexual assault in which the victim of the offense was at the
24 time of the commission of the offense under 18 years of age. In
25 all such cases, an application for an order approving the
26 previous or continuing use of an eavesdropping device must be

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

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

13 (h) Recordings made simultaneously with the use of an
14 in-car video camera or officer-worn video camera recording of
15 an oral conversation between a uniformed peace officer, who has
16 identified his or her office, and a person in the presence of
17 the peace officer whenever (i) an officer assigned a patrol
18 vehicle is conducting an enforcement stop; or (ii) patrol
19 vehicle emergency lights are activated or would otherwise be
20 activated if not for the need to conceal the presence of law
21 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-1) Recordings made simultaneously with the use of an
4 officer-worn video camera recording of an oral conversation
5 between a uniformed peace officer, who has identified his or
6 her office, and a person in the presence of the peace officer,
7 whenever the officer has reasonable suspicion that a person in
8 the vicinity has committed, is committing, or is about to
9 commit an offense.

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

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

21 (h-15) Recordings made under subsection (h), (h-5), or
22 (h-10) shall be retained by the law enforcement agency that
23 employs the peace officer who made the recordings for a storage
24 period of 90 days, unless the recordings are made as a part of
25 an arrest or the recordings are deemed evidence in any
26 criminal, civil, or administrative proceeding and then the

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

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

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

23 (i) the monitoring is used for the purpose of service
24 quality control of marketing or opinion research or
25 telephone solicitation, the education or training of
26 employees or contractors engaged in marketing or opinion

1 research or telephone solicitation, or internal research
2 related to marketing or opinion research or telephone
3 solicitation; and

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

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

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

26 Business entities that use a telephone monitoring or

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

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

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

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

20 For the purposes of this subsection (j), "marketing or
21 opinion research" means a marketing or opinion research
22 interview conducted by a live telephone interviewer engaged by
23 a corporation or other business entity whose principal business
24 is the design, conduct, and analysis of polls and surveys
25 measuring the opinions, attitudes, and responses of
26 respondents toward products and services, or social or

1 political issues, or both;

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

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

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

26 Recordings made pursuant to this subsection (m) shall be

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

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

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

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

25 (q) (1) With prior request to and verbal approval of the
26 State's Attorney of the county in which the conversation is

1 anticipated to occur, recording or listening with the aid of an
2 eavesdropping device to a conversation in which a law
3 enforcement officer, or any person acting at the direction of a
4 law enforcement officer, is a party to the conversation and has
5 consented to the conversation being intercepted or recorded in
6 the course of an investigation of a drug offense. The State's
7 Attorney may grant this verbal approval only after determining
8 that reasonable cause exists to believe that a drug offense
9 will be committed by a specified individual or individuals
10 within a designated period of time.

11 (2) Request for approval. To invoke the exception contained
12 in this subsection (q), a law enforcement officer shall make a
13 written or verbal request for approval to the appropriate
14 State's Attorney. This request for approval shall include
15 whatever information is deemed necessary by the State's
16 Attorney but shall include, at a minimum, the following
17 information about each specified individual whom the law
18 enforcement officer believes will commit a drug offense:

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

20 (B) a physical description; or

21 (C) failing either (A) or (B) of this paragraph (2),
22 any other supporting information known to the law
23 enforcement officer at the time of the request that gives
24 rise to reasonable cause to believe the individual will
25 commit a drug offense.

26 (3) Limitations on verbal approval. Each verbal approval by

1 the State's Attorney under this subsection (q) shall be limited
2 to:

3 (A) a recording or interception conducted by a
4 specified law enforcement officer or person acting at the
5 direction of a law enforcement officer;

6 (B) recording or intercepting conversations with the
7 individuals specified in the request for approval,
8 provided that the verbal approval shall be deemed to
9 include the recording or intercepting of conversations
10 with other individuals, unknown to the law enforcement
11 officer at the time of the request for approval, who are
12 acting in conjunction with or as co-conspirators with the
13 individuals specified in the request for approval in the
14 commission of a drug offense;

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

17 (4) Admissibility of evidence. No part of the contents of
18 any wire, electronic, or oral communication that has been
19 recorded or intercepted as a result of this exception may be
20 received in evidence in any trial, hearing, or other proceeding
21 in or before any court, grand jury, department, officer,
22 agency, regulatory body, legislative committee, or other
23 authority of this State, or a political subdivision of the
24 State, other than in a prosecution of:

25 (A) a drug offense;

26 (B) a forcible felony committed directly in the course

1 of the investigation of a drug offense for which verbal
2 approval was given to record or intercept a conversation
3 under this subsection (q); or

4 (C) any other forcible felony committed while the
5 recording or interception was approved in accordance with
6 this Section (q), but for this specific category of
7 prosecutions, only if the law enforcement officer or person
8 acting at the direction of a law enforcement officer who
9 has consented to the conversation being intercepted or
10 recorded suffers great bodily injury or is killed during
11 the commission of the charged forcible felony.

12 (5) Compliance with the provisions of this subsection is a
13 prerequisite to the admissibility in evidence of any part of
14 the contents of any wire, electronic or oral communication that
15 has been intercepted as a result of this exception, but nothing
16 in this subsection shall be deemed to prevent a court from
17 otherwise excluding the evidence on any other ground, nor shall
18 anything in this subsection be deemed to prevent a court from
19 independently reviewing the admissibility of the evidence for
20 compliance with the Fourth Amendment to the U.S. Constitution
21 or with Article I, Section 6 of the Illinois Constitution.

22 (6) Use of recordings or intercepts unrelated to drug
23 offenses. Whenever any wire, electronic, or oral communication
24 has been recorded or intercepted as a result of this exception
25 that is not related to a drug offense or a forcible felony
26 committed in the course of a drug offense, no part of the

1 contents of the communication and evidence derived from the
2 communication may be received in evidence in any trial,
3 hearing, or other proceeding in or before any court, grand
4 jury, department, officer, agency, regulatory body,
5 legislative committee, or other authority of this State, or a
6 political subdivision of the State, nor may it be publicly
7 disclosed in any way.

8 (7) Definitions. For the purposes of this subsection (q)
9 only:

10 "Drug offense" includes and is limited to a felony
11 violation of one of the following: (A) the Illinois
12 Controlled Substances Act, (B) the Cannabis Control Act,
13 and (C) the Methamphetamine Control and Community
14 Protection Act.

15 "Forcible felony" includes and is limited to those
16 offenses contained in Section 2-8 of the Criminal Code of
17 1961 as of the effective date of this amendatory Act of the
18 97th General Assembly, and only as those offenses have been
19 defined by law or judicial interpretation as of that date.

20 "State's Attorney" includes and is limited to the
21 State's Attorney or an assistant State's Attorney
22 designated by the State's Attorney to provide verbal
23 approval to record or intercept conversations under this
24 subsection (q).

25 (8) Sunset. This subsection (q) is inoperative on and after
26 January 1, 2015. No conversations intercepted pursuant to this

1 subsection (q), while operative, shall be inadmissible in a
2 court of law by virtue of the inoperability of this subsection
3 (q) on January 1, 2015.

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; 97-846, eff. 1-1-13; 97-897, eff. 1-1-13; revised
8 8-23-12.)".