



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB1638

Introduced 2/20/2015, by Sen. Michael Connelly

SYNOPSIS AS INTRODUCED:

See Index

Creates the Private Electronic Communications Protection Act. Prohibits the State or units of local government, notwithstanding any other provision of law or rule to the contrary, from using a person's private electronic communication or data held by a third-party computer service or communications common carrier in any judicial, criminal, civil, or administrative proceeding, unless the person's private electronic communication or data was obtained by a court issued search warrant, order authorizing use of an eavesdropping device, or order authorizing interception of private communications. Provides an exception if consented to by the sender and recipient of the private electronic communication or if obtained under a constitutionally authorized exception to the search warrant requirement. Makes any private electronic communication obtained in violation of this requirement inadmissible in any judicial, criminal, civil, or administrative proceeding. Defines terms. Amends the Criminal Code of 2012 and the Code of Criminal Procedure of 1963. Adds private electronic communications and data to the search warrant, eavesdropping, and wiretap provisions. Effective immediately.

LRB099 02677 MRW 22684 b

1 AN ACT concerning electronic communications.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Private Electronic Communications Protection Act.

6 Section 5. Definitions.

7 In this Act, unless the context clearly requires otherwise,
8 the following terms are defined as indicated:

9 "Communications common carrier" means any person engaged
10 as a common carrier in the transmission of communications by
11 wire or radio, not including radio broadcasting.

12 "Computer services" means computer time or services,
13 including data processing services, Internet services,
14 electronic mail services, electronic message services, or
15 information or data stored in connection therewith.

16 "Data" means a representation in any form of information,
17 knowledge, facts, concepts, or instructions, including program
18 documentation, which is prepared or has been prepared in a
19 formalized manner and is stored or processed in or transmitted
20 by a computer or in a system or network. Data is considered
21 property and may be in any form, including, but not limited to,
22 printouts, magnetic or optical storage media, punch cards, or
23 data stored internally in the memory of the computer.

1 "Private electronic communication" means any transfer of
2 signs, signals, writing, images, sounds, data, or intelligence
3 of any nature transmitted in whole or part by a wire, radio,
4 pager, computer, or electromagnetic, photo electronic, or
5 photo optical system when the sending or receiving party
6 intends the electronic communication to be private and that the
7 communication is not subject to interception, under
8 circumstances reasonably justifying that expectation. A
9 reasonable expectation of privacy shall include any
10 expectation recognized by law, including, but not limited to,
11 an expectation derived from a privilege, immunity, or right
12 established by common law, Supreme Court rule, or the Illinois
13 or United States Constitution. Circumstances that reasonably
14 justify the expectation that a communication is not subject to
15 interception include the use of a cellular communication
16 device. "Private electronic communication" does not include:

- 17 (1) any wire or oral communication; or
18 (2) any communication from a tracking device.

19 Section 10. Third-party electronic communications.

20 (a) Notwithstanding any other provision of law or rule to
21 the contrary and except as provided in subsection (b) of this
22 Section, the State and units of local government may not use a
23 person's private electronic communication or data held by a
24 third-party computer service or communications common carrier
25 in any judicial, criminal, civil, or administrative

1 proceeding, unless the person's private electronic
2 communication or data is obtained by a court issued:

3 (1) search warrant under Article 108 of the Code of
4 Criminal Procedure of 1963;

5 (2) order authorizing use of an eavesdropping device
6 under Article 108A of the Code of Criminal Procedure of
7 1963; or

8 (3) order authorizing interception of private
9 communications under Article 108B of the Code of Criminal
10 Procedure of 1963.

11 (b) The State or a unit of local government may obtain a
12 person's private electronic communication or data held by a
13 third-party computer service or communications common carrier
14 if:

15 (1) the sender and recipient of the private electronic
16 communication or data provides express and informed
17 consent; or

18 (2) obtained under a constitutionally authorized
19 exception to the search warrant requirement.

20 (c) Notwithstanding any other provision of law or rule to
21 the contrary, any person's private electronic communication or
22 data obtained in violation of this Section is inadmissible in
23 any judicial, criminal, civil, or administrative proceeding.

24 (d) Nothing in this Section shall be construed as requiring
25 a search warrant for cellular location information in an
26 emergency situation. For the purposes of this subsection (d),

1 "emergency situation" means response by a law enforcement
2 agency to a call for emergency services or in an emergency
3 situation that involves the risk of death or serious physical
4 harm.

5 Section 905. The Criminal Code of 2012 is amended by
6 changing Section 14-5 as follows:

7 (720 ILCS 5/14-5) (from Ch. 38, par. 14-5)

8 Sec. 14-5. Evidence inadmissible. Any evidence obtained in
9 violation of this Article is not admissible in any civil or
10 criminal trial, or any administrative or legislative inquiry or
11 proceeding, nor in any grand jury proceedings; provided,
12 however, that so much of the contents of an alleged unlawfully
13 intercepted, overheard or recorded conversation or electronic
14 communication as is clearly relevant, as determined as a matter
15 of law by the court in chambers, to the proof of such
16 allegation may be admitted into evidence in any criminal trial
17 or grand jury proceeding brought against any person charged
18 with violating any provision of this Article. Nothing in this
19 Section bars admission of evidence if all parties to the
20 private conversation or private electronic communication
21 consent to admission of the evidence.

22 (Source: P.A. 98-1142, eff. 12-30-14.)

23 Section 910. The Code of Criminal Procedure of 1963 is

1 amended by changing Sections 108-2, 108-3, 108-6, 108-7, 108-9,
2 108-10, 108-11, 108A-1, 108A-2, 108A-3, 108A-4, 108A-5,
3 108A-6, 108A-7, 108A-8, 108A-9, 108A-11, 108B-2a, 108B-9, and
4 108B-13 and by adding Sections 108-0.5 and 108A-0.5 as follows:

5 (725 ILCS 5/108-0.5 new)

6 Sec. 108-0.5. Definitions.

7 For the purposes of this Article, "data" means a
8 representation in any form of information, knowledge, facts,
9 concepts, or instructions, including program documentation,
10 which is prepared or has been prepared in a formalized manner
11 and is stored or processed in or transmitted by a computer or
12 in a system or network. Data is considered property and may be
13 in any form, including, but not limited to, printouts, magnetic
14 or optical storage media, punch cards, or data stored
15 internally in the memory of the computer.

16 (725 ILCS 5/108-2) (from Ch. 38, par. 108-2)

17 Sec. 108-2. Custody and disposition of things seized. An
18 inventory of all instruments, articles, data, or things seized
19 on a search without warrant shall be given to the person
20 arrested and a copy thereof delivered to the judge before whom
21 the person arrested is taken, and thereafter, such instruments,
22 articles, data, or things shall be handled and disposed of in
23 accordance with Sections 108-11 and 108-12 of this Code. If the
24 person arrested is released without a charge being preferred

1 against him or her all instruments, articles, data, or things
2 seized, other than contraband, shall be returned to him or her
3 upon release.

4 (Source: Laws 1963, p. 2836.)

5 (725 ILCS 5/108-3) (from Ch. 38, par. 108-3)

6 Sec. 108-3. Grounds for search warrant.

7 (a) Except as provided in subsection (b), upon the written
8 complaint of any person under oath or affirmation which states
9 facts sufficient to show probable cause and which particularly
10 describes the place or person, or both, to be searched and the
11 things to be seized, any judge may issue a search warrant for
12 the seizure of the following:

13 (1) Any instruments, articles, data, or things
14 designed or intended for use or which are or have been used
15 in the commission of, or which may constitute evidence of,
16 the offense in connection with which the warrant is issued;
17 or contraband, the fruits of crime, or things otherwise
18 criminally possessed.

19 (2) Any person who has been kidnaped in violation of
20 the laws of this State, or who has been kidnaped in another
21 jurisdiction and is now concealed within this State, or any
22 human fetus or human corpse.

23 (b) When the things to be seized are the work product of,
24 or used in the ordinary course of business, and in the
25 possession, custody, or control of any person known to be

1 engaged in the gathering or dissemination of news for the print
2 or broadcast media, no judge may issue a search warrant unless
3 the requirements set forth in subsection (a) are satisfied and
4 there is probable cause to believe that:

5 (1) such person has committed or is committing a
6 criminal offense; or

7 (2) the things to be seized will be destroyed or
8 removed from the State if the search warrant is not issued.

9 (Source: P.A. 89-377, eff. 8-18-95.)

10 (725 ILCS 5/108-6) (from Ch. 38, par. 108-6)

11 Sec. 108-6. Execution of search warrants.

12 The warrant shall be executed within 96 hours from the time
13 of issuance. If the warrant is executed the duplicate copy
14 shall be left with any person from whom any instruments,
15 articles, data, or things are seized or if no person is
16 available the copy shall be left at the place from which the
17 instruments, articles, data, or things were seized. Any warrant
18 not executed within such time shall be void and shall be
19 returned to the court of the judge issuing the same as "not
20 executed".

21 (Source: Laws 1963, p. 2836.)

22 (725 ILCS 5/108-7) (from Ch. 38, par. 108-7)

23 Sec. 108-7. Command of search warrant.

24 The warrant shall command the person directed to execute

1 the same to search the place or person particularly described
2 in the warrant and to seize the instruments, articles, data, or
3 things particularly described in the warrant.

4 (Source: Laws 1963, p. 2836.)

5 (725 ILCS 5/108-9) (from Ch. 38, par. 108-9)

6 Sec. 108-9. Detention and search of persons on premises.

7 In the execution of the warrant the person executing the
8 same may reasonably detain to search any person in the place at
9 the time:

10 (a) To protect himself or herself from attack, or

11 (b) To prevent the disposal or concealment of any
12 instruments, articles, data, or things particularly described
13 in the warrant.

14 (Source: Laws 1963, p. 2836.)

15 (725 ILCS 5/108-10) (from Ch. 38, par. 108-10)

16 Sec. 108-10. Return to court of things seized.

17 A return of all instruments, articles, data, or things
18 seized shall be made without unnecessary delay before the judge
19 issuing the warrant or before any judge named in the warrant or
20 before any court of competent jurisdiction. An inventory of any
21 instruments, articles, data, or things seized shall be filed
22 with the return and signed under oath by the officer or person
23 executing the warrant. The judge shall upon request deliver a
24 copy of the inventory to the person from whom or from whose

1 premises the instruments, articles, data, or things were taken
2 and to the applicant for the warrant.

3 (Source: Laws 1963, p. 2836.)

4 (725 ILCS 5/108-11) (from Ch. 38, par. 108-11)

5 Sec. 108-11. Disposition of things seized. The court before
6 which the instruments, articles, data, or things are returned
7 shall enter an order providing for their custody pending
8 further proceedings.

9 (Source: P.A. 83-334.)

10 (725 ILCS 5/108A-0.5 new)

11 Sec. 108A-0.5. Definitions.

12 For the purposes of this Article, "private electronic
13 communication" means any transfer of signs, signals, writing,
14 images, sounds, data, or intelligence of any nature transmitted
15 in whole or part by a wire, radio, pager, computer, or
16 electromagnetic, photo electronic, or photo optical system
17 when the sending or receiving party intends the electronic
18 communication to be private under circumstances reasonably
19 justifying that expectation. A reasonable expectation shall
20 include any expectation recognized by law, including, but not
21 limited to, an expectation derived from a privilege, immunity,
22 or right established by common law, Supreme Court rule, or the
23 Illinois or United States Constitution. "Private electronic
24 communication" does not include:

- 1 (1) any wire or oral communication; or
2 (2) any communication from a tracking device.

3 (725 ILCS 5/108A-1) (from Ch. 38, par. 108A-1)

4 Sec. 108A-1. Authorization for use of eavesdropping
5 device. The State's Attorney or an Assistant State's Attorney
6 authorized by the State's Attorney may authorize an application
7 to a circuit judge or an associate judge assigned by the Chief
8 Judge of the circuit for, and such judge may grant in
9 conformity with this Article, an order authorizing or approving
10 the use of an eavesdropping device by a law enforcement officer
11 or agency having the responsibility for the investigation of
12 any felony under Illinois law where any one party to a
13 conversation, including a private electronic communication, to
14 be monitored, or previously monitored in the case of an
15 emergency situation as defined in this Article, has consented
16 to such monitoring.

17 The Chief Judge of the circuit may assign to associate
18 judges the power to issue orders authorizing or approving the
19 use of eavesdropping devices by law enforcement officers or
20 agencies in accordance with this Article. After assignment by
21 the Chief Judge, an associate judge shall have plenary
22 authority to issue such orders without additional
23 authorization for each specific application made to him or her
24 by the State's Attorney until such time as the associate
25 judge's power is rescinded by the Chief Judge.

1 (Source: P.A. 92-413, eff. 8-17-01.)

2 (725 ILCS 5/108A-2) (from Ch. 38, par. 108A-2)

3 Sec. 108A-2. Authorized Disclosure or Use of Information.

4 (a) Any law enforcement officer who, by any means authorized in
5 this Article, has obtained knowledge of the contents of any
6 conversation, including a private electronic communication,
7 overheard or recorded by use of an eavesdropping device or
8 evidence derived therefrom, may disclose such contents to
9 another law enforcement officer or prosecuting attorney to the
10 extent that such disclosure is appropriate to the proper
11 performance of the official duties of the person making or
12 receiving the disclosure.

13 (b) Any investigative or law enforcement officer who, by
14 any means authorized in this Article, has obtained knowledge of
15 the contents of any conversation, including a private
16 electronic communication, overheard or recorded use of an
17 eavesdropping device or evidence derived therefrom, may use the
18 contents to the extent such use is appropriate to the proper
19 performance of his or her official duties.

20 (c) Admissibility into evidence in any judicial,
21 administrative, or legislative proceeding shall be as
22 elsewhere described in this Article.

23 (Source: P.A. 79-1159.)

24 (725 ILCS 5/108A-3) (from Ch. 38, par. 108A-3)

1 Sec. 108A-3. Procedure for Obtaining Judicial Approval of
2 Use of Eavesdropping Device. (a) Where any one party to a
3 conversation, including a private electronic communication, to
4 occur in the future has consented to the use of an
5 eavesdropping device to overhear or record the conversation or
6 private electronic communication, a judge may grant approval to
7 an application to use an eavesdropping device under ~~pursuant to~~
8 the provisions of this Section ~~section~~.

9 Each application for an order authorizing or subsequently
10 approving the use of an eavesdropping device shall be made in
11 writing upon oath or affirmation to a circuit judge, or an
12 associate judge assigned for such purpose pursuant to Section
13 108A-1 of this Code, and shall state the applicant's authority
14 to make such application. Each application shall include the
15 following:

16 (1) the identity of the investigative or law enforcement
17 officer making the application and the State's Attorney
18 authorizing the application;

19 (2) a statement of the facts and circumstances relied upon
20 by the applicant to justify his or her belief that an order
21 should be issued including: (a) details as to the felony that
22 has been, is being, or is about to be committed; (b) a
23 description of the type of communication sought to be
24 monitored; (c) the identity of the party to the expected
25 conversation or private electronic communication consenting to
26 the use of an eavesdropping device; (d) the identity of the

1 person, if known, whose conversations or private electronic
2 communications are to be overheard by the eavesdropping device;

3 (3) a statement of the period of time for which the use of
4 the device is to be maintained or, if the nature of the
5 investigation is such that the authorization for use of the
6 device should not terminate automatically when the described
7 type of communication is overheard or recorded, a description
8 of facts establishing reasonable cause to believe that
9 additional conversations or private electronic communications
10 of the same type will occur thereafter;

11 (4) a statement of the existence of all previous
12 applications known to the individual making the application
13 which have been made to any judge requesting permission to use
14 an eavesdropping device involving the same persons in the
15 present application, and the action taken by the judge on the
16 previous applications;

17 (5) when the application is for an extension of an order, a
18 statement setting forth the results so far obtained from the
19 use of the eavesdropping device or an explanation of the
20 failure to obtain such results.

21 (b) The judge may request the applicant to furnish
22 additional testimony, witnesses, or evidence in support of the
23 application.

24 (Source: P.A. 86-391.)

25 (725 ILCS 5/108A-4) (from Ch. 38, par. 108A-4)

1 Sec. 108A-4. Grounds for Approval or Authorization. The
2 judge may authorize or approve the use of the eavesdropping
3 device where it is found that:

4 (a) one party to the conversation, including a private
5 electronic communication, has or will have consented to the use
6 of the device;

7 (b) there is reasonable cause for believing that an
8 individual is committing, has committed, or is about to commit
9 a felony under Illinois law;

10 (c) there is reasonable cause for believing that particular
11 conversations or private electronic communications concerning
12 that felony offense will be obtained through such use; and

13 (d) for any extension authorized, that further use of a
14 device is warranted on similar grounds.

15 (Source: P.A. 79-1159.)

16 (725 ILCS 5/108A-5) (from Ch. 38, par. 108A-5)

17 Sec. 108A-5. Orders Authorizing Use of an Eavesdropping
18 Device.

19 (a) Each order authorizing or approving the use of an
20 eavesdropping device shall specify:

21 (1) the identity of the person who has consented to the
22 use of the device to monitor any of his or her
23 conversations, including private electronic
24 communications, and a requirement that any conversation or
25 private electronic communication overheard or received

1 must include this person;

2 (2) the identity of the other person or persons, if
3 known, who will participate in the conversation or private
4 electronic communication;

5 (3) the period of time in which the use of the device
6 is authorized, including a statement as to whether or not
7 the use shall automatically terminate when the described
8 conversations or private electronic communications have
9 been first obtained.

10 (b) No order entered under this Section ~~section~~ may
11 authorize or approve the use of any eavesdropping device for
12 any period longer than 30 days. An initial or a subsequent
13 extension, in no case for more than 30 days each, of an order
14 may be granted but only upon application made in accordance
15 with Section 108A-3 and where the court makes the findings
16 required in Section 108A-4.

17 (Source: P.A. 92-413, eff. 8-17-01.)

18 (725 ILCS 5/108A-6) (from Ch. 38, par. 108A-6)

19 Sec. 108A-6. Emergency Exception to Procedures. (a)
20 Notwithstanding any other provisions of this Article, any
21 investigative or law enforcement officer, upon approval of a
22 State's Attorney, or without it if a reasonable effort has been
23 made to contact the appropriate State's Attorney, may use an
24 eavesdropping device in an emergency situation as defined in
25 this Section. Such use must be in accordance with the

1 provisions of this Section and may be allowed only where the
2 officer reasonably believes that an order permitting the use of
3 the device would issue were there a prior hearing.

4 An emergency situation exists when, without previous
5 notice to the law enforcement officer sufficient to obtain
6 prior judicial approval, the conversation, including a private
7 electronic communication, to be overheard or recorded will
8 occur within a short period of time, the use of the device is
9 necessary for the protection of the law enforcement officer or
10 it will occur in a situation involving a clear and present
11 danger of imminent death or great bodily harm to persons
12 resulting from: (1) a kidnapping or the holding of a hostage by
13 force or the threat of the imminent use of force; or (2) the
14 occupation by force or the threat of the imminent use of force
15 of any premises, place, vehicle, vessel or aircraft; or (3) any
16 violation of Article 29D.

17 (b) In all such cases, an application for an order
18 approving the previous or continuing use of an eavesdropping
19 device must be made within 48 hours of the commencement of such
20 use. In the absence of such an order, or upon its denial, any
21 continuing use shall immediately terminate.

22 In order to approve such emergency use, the judge must make
23 a determination (1) that he or she would have granted an order
24 had the information been before the court prior to the use of
25 the device and (2) that there was an emergency situation as
26 defined in this Section.

1 (c) In the event that an application for approval under
2 this Section is denied the contents of the conversations or
3 private electronic communications overheard or recorded shall
4 be treated as having been obtained in violation of this
5 Article.

6 (Source: P.A. 92-854, eff. 12-5-02.)

7 (725 ILCS 5/108A-7) (from Ch. 38, par. 108A-7)

8 Sec. 108A-7. Retention and Review of Recordings.

9 (a) The contents of any conversation, including a private
10 electronic communication, overheard by any eavesdropping
11 device shall, if possible, be recorded on tape, magnetic or
12 optical storage media, or a comparable device. The recording of
13 the contents of a conversation or private electronic
14 communication under this Article shall be done in such a way as
15 will protect the recording from editing or other alterations.

16 (b) Immediately after the expiration of the period of the
17 order or extension or, where the recording was made in an
18 emergency situation as defined in Section 108A-6, at the time
19 of the request for approval subsequent to the emergency, all
20 such recordings shall be made available to the judge issuing
21 the order or hearing the application for approval of an
22 emergency application.

23 The judge shall listen to or read the recording tapes,
24 determine if the conversations or private electronic
25 communications thereon are within his or her order or were

1 appropriately made in emergency situations, and make a record
2 of such determination to be retained with the recording ~~tapes~~.

3 The recordings shall be sealed under the instructions of
4 the judge and custody shall be where he or she orders. These
5 ~~Such~~ recordings shall not be destroyed except upon order of the
6 judge hearing the application and in any event shall be kept
7 for 10 years if not destroyed upon his or her order.

8 Duplicate recordings may be made for any use or disclosure
9 authorized by this Article. The presence of the seal provided
10 for in this Section or a satisfactory explanation for the
11 absence thereof shall be a pre-requisite for the use or
12 disclosure of the contents of the recordings or any evidence
13 derived therefrom.

14 (c) Applications made and orders granted under this Article
15 shall be sealed by the judge. Custody of the applications and
16 orders shall be wherever the judge requests. These ~~Such~~
17 applications and orders shall be disclosed only upon a showing
18 of good cause before a judge. Such documents shall not be
19 destroyed except on the order of the issuing or denying judge
20 or after the expiration of 10 years time if not destroyed upon
21 his or her order.

22 (Source: P.A. 79-1159.)

23 (725 ILCS 5/108A-8) (from Ch. 38, par. 108A-8)

24 Sec. 108A-8. Notice to Parties Overheard.

25 (a) Within a reasonable time, but not later than 90 days

1 after either the filing of an application for an order of
2 authorization or approval which is denied or not later than 90
3 days after the termination of the period of an order or
4 extension thereof, the issuing or denying judge shall cause to
5 be served on the persons named in the order or application and
6 such other persons in the recorded conversation or private
7 electronic communication as the judge may determine that
8 justice requires be notified, a notice of the transaction
9 involving any requested or completed use of an eavesdropping
10 device which shall include:

11 (1) notice of the entry of an order, of subsequent approval
12 in an emergency situation, or the denial of an application;

13 (2) the date of the entry, approval, or denial;

14 (3) the period of the authorized use of any eavesdropping
15 device; and

16 (4) notice of whether during the period of eavesdropping
17 devices were or were not used to overhear and record various
18 conversations or private electronic communications and whether
19 or not such conversations or private electronic communications
20 are recorded.

21 On an ex parte showing of good cause, the notice required
22 by this subsection may be postponed.

23 (b) Upon the filing of a motion, the judge may in his or
24 her discretion make available to such person or his or her
25 attorney for inspection such portions of the recorded
26 conversations or private electronic communications or the

1 applications and orders as the judge determines it would be in
2 the interest of justice to make available.

3 (c) The contents of any recorded conversation, including a
4 private electronic communication, or evidence derived
5 therefrom shall not be received in evidence or otherwise
6 disclosed in any trial, hearing, or other judicial or
7 administrative proceeding unless each party not less than 10
8 days before such a proceeding has been furnished with a copy of
9 the court order and accompanying application under which the
10 recording was authorized or approved and has had an opportunity
11 to examine the portion of the tapes to be introduced or relied
12 upon. Such 10 day period may be waived by the judge if he or she
13 finds that it was not possible to furnish the party with such
14 information within the stated period and that the party will
15 not be materially prejudiced by the delay in receiving such
16 information.

17 (Source: P.A. 79-1159.)

18 (725 ILCS 5/108A-9) (from Ch. 38, par. 108A-9)

19 Sec. 108A-9. Motion to Suppress Contents of Recording, etc.

20 (a) Any aggrieved person in any judicial or administrative
21 proceeding may move to suppress the contents of any recorded
22 conversation, including a private electronic communication, or
23 evidence derived therefrom on the grounds that:

24 (1) the conversation or private electronic communication
25 was unlawfully overheard and recorded;

1 (2) the order of authorization or approval under which the
2 device was used or a recording made was improperly granted; or

3 (3) the recording or interception was not made in
4 conformity with the order of authorization.

5 (b) Such a motion shall be made before the proceeding
6 unless there was no previous opportunity for such motion. If
7 the motion is granted, the contents shall be treated as having
8 been obtained in violation of this Article. Upon the filing of
9 such a motion, the judge may in his or her discretion make
10 available to the moving party or his or her attorney such
11 portions of the recorded conversation, including a private
12 electronic communication, or evidence derived therefrom as the
13 judge determines to be in the interests of justice.

14 (Source: P.A. 79-1159.)

15 (725 ILCS 5/108A-11) (from Ch. 38, par. 108A-11)

16 Sec. 108A-11. Reports Concerning Use of Eavesdropping
17 Devices. (a) In January of each year the State's Attorney of
18 each county in which eavesdropping devices were used pursuant
19 to the provisions of this Article shall report to the
20 Department of State Police the following with respect to each
21 application for an order authorizing the use of an
22 eavesdropping device, or an extension thereof, made during the
23 preceding calendar year:

24 (1) the fact that such an order, extension, or subsequent
25 approval of an emergency was applied for;

1 (2) the kind of order or extension applied for;

2 (3) a statement as to whether the order or extension was
3 granted as applied for was modified, or was denied;

4 (4) the period authorized by the order or extensions in
5 which an eavesdropping device could be used;

6 (5) the felony specified in the order extension or denied
7 application;

8 (6) the identity of the applying investigative or law
9 enforcement officer and agency making the application and the
10 State's Attorney authorizing the application; and

11 (7) the nature of the facilities from which or the place
12 where the eavesdropping device was to be used.

13 (b) Such report shall also include the following:

14 (1) a general description of the uses of eavesdropping
15 devices actually made under such order to overhear ~~overheard~~ or
16 record conversations or private electronic communications,
17 including: (a) the approximate nature and frequency of
18 incriminating conversations or private electronic
19 communications overheard, (b) the approximate nature and
20 frequency of other conversations or private electronic
21 communications overheard, (c) the approximate number of
22 persons whose conversations or private electronic
23 communications were overheard, and (d) the approximate nature,
24 amount, and cost of the manpower and other resources used
25 pursuant to the authorization to use an eavesdropping device;

26 (2) the number of arrests resulting from authorized uses of

1 eavesdropping devices and the offenses for which arrests were
2 made;

3 (3) the number of trials resulting from such uses of
4 eavesdropping devices;

5 (4) the number of motions to suppress made with respect to
6 such uses, and the number granted or denied; and

7 (5) the number of convictions resulting from such uses and
8 the offenses for which the convictions were obtained and a
9 general assessment of the importance of the convictions.

10 (c) In April of each year, the Department of State Police
11 shall transmit to the General Assembly a report including
12 information on the number of applications for orders
13 authorizing the use of eavesdropping devices, the number of
14 orders and extensions granted or denied during the preceding
15 calendar year, and the convictions arising out of such uses.

16 The requirement for reporting to the General Assembly shall
17 be satisfied by filing copies of the report with the Speaker,
18 the Minority Leader and the Clerk of the House of
19 Representatives and the President, the Minority Leader and the
20 Secretary of the Senate and the Legislative Research Unit, as
21 required by Section 3.1 of "An Act to revise the law in
22 relation to the General Assembly", approved February 25, 1874,
23 as amended, and filing such additional copies with the State
24 Government Report Distribution Center for the General Assembly
25 as is required under paragraph (t) of Section 7 of the State
26 Library Act.

1 (Source: P.A. 86-391.)

2 (725 ILCS 5/108B-2a) (from Ch. 38, par. 108B-2a)

3 Sec. 108B-2a. Authorized disclosure or use of information.

4 (a) Any law enforcement officer who, by any means authorized in
5 this Article, has obtained knowledge of the contents of any
6 conversation, including a private electronic communication,
7 overheard or recorded by use of an eavesdropping device or
8 evidence derived therefrom, may disclose such contents to
9 another law enforcement officer or prosecuting attorney to the
10 extent that such disclosure is appropriate to the proper
11 performance of the official duties of the person making or
12 receiving the disclosure.

13 (b) Any investigative officer, including any attorney
14 authorized by law to prosecute or participate in the
15 prosecution of offenses enumerated in Section 108B-3 of this
16 Act or law enforcement officer who, by any means authorized in
17 this Article, has obtained knowledge of the contents of any
18 conversation, including a private electronic communication,
19 overheard or recorded by use of an eavesdropping device or
20 evidence derived therefrom, may use the contents to the extent
21 such use is appropriate to the proper performance of his or her
22 official duties.

23 (c) Admissibility into evidence in any judicial,
24 administrative, or legislative proceeding shall be as
25 elsewhere described in this Article.

1 (Source: P.A. 85-1203.)

2 (725 ILCS 5/108B-9) (from Ch. 38, par. 108B-9)

3 Sec. 108B-9. Recordings, records and custody.

4 (a) Any private communication intercepted in accordance
5 with this Article shall, if practicable, be recorded by tape or
6 other comparable method. The recording shall, if practicable,
7 be done in such a way as will protect it from editing or other
8 alteration. During an interception, the interception shall be
9 carried out by an electronic criminal surveillance officer,
10 and, if practicable, such officer shall keep a signed, written
11 record, including:

12 (1) the date and hours of surveillance;

13 (2) the time and duration of each intercepted
14 communication;

15 (3) the parties, if known, to each intercepted
16 conversation, including a private electronic
17 communication; and

18 (4) a summary of the contents of each intercepted
19 communication.

20 (b) Immediately upon the expiration of the order or its
21 extensions, the tapes and other recordings shall be transferred
22 to the chief judge issuing the order and sealed under his or
23 her direction. Custody of the tapes, or other recordings, shall
24 be maintained wherever the chief judge directs. They shall not
25 be destroyed except upon an order of a court of competent

1 jurisdiction and in any event shall be kept for 10 years.
2 Duplicate tapes or other recordings may be made for disclosure
3 or use under paragraph (a) of Section 108B-2a of this Article.
4 The presence of the seal provided by this Section, or a
5 satisfactory explanation for its absence, shall be a
6 prerequisite for the disclosure of the contents of any private
7 communication, or evidence derived from it, under paragraph (b)
8 of Section 108B-2a of this Article.

9 (Source: P.A. 92-854, eff. 12-5-02.)

10 (725 ILCS 5/108B-13) (from Ch. 38, par. 108B-13)

11 Sec. 108B-13. Reports concerning use of eavesdropping
12 devices.

13 (a) Within 30 days after the expiration of an order and
14 each extension thereof authorizing an interception, or within
15 30 days after the denial of an application or disapproval of an
16 application subsequent to any alleged emergency situation, the
17 State's Attorney shall report to the Department of State Police
18 the following:

19 (1) the fact that such an order, extension, or
20 subsequent approval of an emergency was applied for;

21 (2) the kind of order or extension applied for;

22 (3) a statement as to whether the order or extension
23 was granted as applied for was modified, or was denied;

24 (4) the period authorized by the order or extensions in
25 which an eavesdropping device could be used;

1 (5) the offense enumerated in Section 108B-3 which is
2 specified in the order or extension or in the denied
3 application;

4 (6) the identity of the applying electronic criminal
5 surveillance officer and agency making the application and
6 the State's Attorney authorizing the application; and

7 (7) the nature of the facilities from which or the
8 place where the eavesdropping device was to be used.

9 (b) In January of each year the State's Attorney of each
10 county in which an interception occurred pursuant to the
11 provisions of this Article shall report to the Department of
12 State Police the following:

13 (1) a general description of the uses of eavesdropping
14 devices actually made under such order to overhear or
15 record conversations or private electronic communications,
16 including: (a) the approximate nature and frequency of
17 incriminating conversations or private electronic
18 communications overheard, (b) the approximate nature and
19 frequency of other conversations or private electronic
20 communications overheard, (c) the approximate number of
21 persons whose conversations or private electronic
22 communications were overheard, and (d) the approximate
23 nature, amount, and cost of the manpower and other
24 resources used pursuant to the authorization to use an
25 eavesdropping device;

26 (2) the number of arrests resulting from authorized

1 uses of eavesdropping devices and the offenses for which
2 arrests were made;

3 (3) the number of trials resulting from such uses of
4 eavesdropping devices;

5 (4) the number of motions to suppress made with respect
6 to such uses, and the number granted or denied; and

7 (5) the number of convictions resulting from such uses
8 and the offenses for which the convictions were obtained
9 and a general assessment of the importance of the
10 convictions.

11 On or before March 1 of each year, the Director of the
12 Department of State Police shall submit to the Governor a
13 report of all intercepts as defined herein conducted pursuant
14 to this Article and terminated during the preceding calendar
15 year. Such report shall include:

16 (1) the reports of State's Attorneys forwarded to the
17 Director as required in this Section;

18 (2) the number of Department personnel authorized to
19 possess, install, or operate electronic, mechanical, or
20 other devices;

21 (3) the number of Department and other law enforcement
22 personnel who participated or engaged in the seizure of
23 intercepts pursuant to this Article during the preceding
24 calendar year;

25 (4) the number of electronic criminal surveillance
26 officers trained by the Department;

1 (5) the total cost to the Department of all activities
2 and procedures relating to the seizure of intercepts during
3 the preceding calendar year, including costs of equipment,
4 manpower, and expenses incurred as compensation for use of
5 facilities or technical assistance provided to or by the
6 Department; and

7 (6) a summary of the use of eavesdropping devices
8 pursuant to orders of interception including (a) the
9 frequency of use in each county, (b) the frequency of use
10 for each crime enumerated in Section 108B-3 of the Code of
11 Criminal Procedure of 1963, as amended, (c) the type and
12 frequency of eavesdropping device use, and (d) the
13 frequency of use by each police department or law
14 enforcement agency of this State.

15 (d) In April of each year, the Director of the Department
16 of State Police and the Governor shall each transmit to the
17 General Assembly reports including information on the number of
18 applications for orders authorizing the use of eavesdropping
19 devices, the number of orders and extensions granted or denied
20 during the preceding calendar year, the convictions arising out
21 of such uses, and a summary of the information required by
22 subsections (a) and (b) of this Section.

23 The requirement for reporting to the General Assembly shall
24 be satisfied by filing copies of the report with the Speaker,
25 the Minority Leader and the Clerk of the House of
26 Representatives and the President, the Minority Leader and the

1 Secretary of the Senate and the Legislative Research Unit, as
2 required by Section 3.1 of the General Assembly Organization
3 Act, and filing such additional copies with the State
4 Government Report Distribution Center for the General Assembly
5 as is required under paragraph (t) of Section 7 of the State
6 Library Act.

7 (Source: P.A. 85-1203; 86-1226; 86-1475.)

8 Section 999. Effective date. This Act takes effect upon
9 becoming law.

1 INDEX
2 Statutes amended in order of appearance

3 New Act

4	720 ILCS 5/14-5	from Ch. 38, par. 14-5
5	725 ILCS 5/108-0.5 new	
6	725 ILCS 5/108-2	from Ch. 38, par. 108-2
7	725 ILCS 5/108-3	from Ch. 38, par. 108-3
8	725 ILCS 5/108-6	from Ch. 38, par. 108-6
9	725 ILCS 5/108-7	from Ch. 38, par. 108-7
10	725 ILCS 5/108-9	from Ch. 38, par. 108-9
11	725 ILCS 5/108-10	from Ch. 38, par. 108-10
12	725 ILCS 5/108-11	from Ch. 38, par. 108-11
13	725 ILCS 5/108A-0.5 new	
14	725 ILCS 5/108A-1	from Ch. 38, par. 108A-1
15	725 ILCS 5/108A-2	from Ch. 38, par. 108A-2
16	725 ILCS 5/108A-3	from Ch. 38, par. 108A-3
17	725 ILCS 5/108A-4	from Ch. 38, par. 108A-4
18	725 ILCS 5/108A-5	from Ch. 38, par. 108A-5
19	725 ILCS 5/108A-6	from Ch. 38, par. 108A-6
20	725 ILCS 5/108A-7	from Ch. 38, par. 108A-7
21	725 ILCS 5/108A-8	from Ch. 38, par. 108A-8
22	725 ILCS 5/108A-9	from Ch. 38, par. 108A-9
23	725 ILCS 5/108A-11	from Ch. 38, par. 108A-11
24	725 ILCS 5/108B-2a	from Ch. 38, par. 108B-2a
25	725 ILCS 5/108B-9	from Ch. 38, par. 108B-9

SB1638

- 32 -

LRB099 02677 MRW 22684 b

1 725 ILCS 5/108B-13

from Ch. 38, par. 108B-13