

# HB1129



## 98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB1129

by Rep. Michael J. Zalewski

### SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-3

Amends the Criminal Code of 2012. Makes a technical change in a Section concerning exemptions from an eavesdropping violation.

LRB098 06261 RLC 36302 b

A BILL FOR

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  
8 ~~shall~~ be 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 recording of an oral conversation between a  
8 uniformed peace officer, who has identified his or her office,  
9 and a person in the presence of the peace officer whenever (i)  
10 an officer assigned a patrol vehicle is conducting an  
11 enforcement stop; or (ii) patrol vehicle emergency lights are  
12 activated or would otherwise be activated if not for the need  
13 to conceal the presence of law enforcement.

14 For the purposes of this subsection (h), "enforcement stop"  
15 means an action by a law enforcement officer in relation to  
16 enforcement and investigation duties, including but not  
17 limited to, traffic stops, pedestrian stops, abandoned vehicle  
18 contacts, motorist assists, commercial motor vehicle stops,  
19 roadside safety checks, requests for identification, or  
20 responses to requests for emergency assistance;

21 (h-5) Recordings of utterances made by a person while in  
22 the presence of a uniformed peace officer and while an occupant  
23 of a police vehicle including, but not limited to, (i)  
24 recordings made simultaneously with the use of an in-car video  
25 camera and (ii) recordings made in the presence of the peace  
26 officer utilizing video or audio systems, or both, authorized



1 by the law enforcement agency;

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

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

18 (i) Recording of a conversation made by or at the request  
19 of a person, not a law enforcement officer or agent of a law  
20 enforcement officer, who is a party to the conversation, under  
21 reasonable suspicion that another party to the conversation is  
22 committing, is about to commit, or has committed a criminal  
23 offense against the person or a member of his or her immediate  
24 household, and there is reason to believe that evidence of the  
25 criminal offense may be obtained by the recording;

26 (j) The use of a telephone monitoring device by either (1)

1 a corporation or other business entity engaged in marketing or  
2 opinion research or (2) a corporation or other business entity  
3 engaged in telephone solicitation, as defined in this  
4 subsection, to record or listen to oral telephone solicitation  
5 conversations or marketing or opinion research conversations  
6 by an employee of the corporation or other business entity  
7 when:

8 (i) the monitoring is used for the purpose of service  
9 quality control of marketing or opinion research or  
10 telephone solicitation, the education or training of  
11 employees or contractors engaged in marketing or opinion  
12 research or telephone solicitation, or internal research  
13 related to marketing or opinion research or telephone  
14 solicitation; and

15 (ii) the monitoring is used with the consent of at  
16 least one person who is an active party to the marketing or  
17 opinion research conversation or telephone solicitation  
18 conversation being monitored.

19 No communication or conversation or any part, portion, or  
20 aspect of the communication or conversation made, acquired, or  
21 obtained, directly or indirectly, under this exemption (j), may  
22 be, directly or indirectly, furnished to any law enforcement  
23 officer, agency, or official for any purpose or used in any  
24 inquiry or investigation, or used, directly or indirectly, in  
25 any administrative, judicial, or other proceeding, or divulged  
26 to any third party.

1           When recording or listening authorized by this subsection  
2           (j) on telephone lines used for marketing or opinion research  
3           or telephone solicitation purposes results in recording or  
4           listening to a conversation that does not relate to marketing  
5           or opinion research or telephone solicitation; the person  
6           recording or listening shall, immediately upon determining  
7           that the conversation does not relate to marketing or opinion  
8           research or telephone solicitation, terminate the recording or  
9           listening and destroy any such recording as soon as is  
10          practicable.

11          Business entities that use a telephone monitoring or  
12          telephone recording system pursuant to this exemption (j) shall  
13          provide current and prospective employees with notice that the  
14          monitoring or recordings may occur during the course of their  
15          employment. The notice shall include prominent signage  
16          notification within the workplace.

17          Business entities that use a telephone monitoring or  
18          telephone recording system pursuant to this exemption (j) shall  
19          provide their employees or agents with access to personal-only  
20          telephone lines which may be pay telephones, that are not  
21          subject to telephone monitoring or telephone recording.

22          For the purposes of this subsection (j), "telephone  
23          solicitation" means a communication through the use of a  
24          telephone by live operators:

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

26                 (ii) receiving orders for the sale of goods or

1 services;

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

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

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

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

20 (l) Recording the interview or statement of any person when  
21 the person knows that the interview is being conducted by a law  
22 enforcement officer or prosecutor and the interview takes place  
23 at a police station that is currently participating in the  
24 Custodial Interview Pilot Program established under the  
25 Illinois Criminal Justice Information Act;

26 (m) An electronic recording, including but not limited to,

1 a motion picture, videotape, digital, or other visual or audio  
2 recording, made of the interior of a school bus while the  
3 school bus is being used in the transportation of students to  
4 and from school and school-sponsored activities, when the  
5 school board has adopted a policy authorizing such recording,  
6 notice of such recording policy is included in student  
7 handbooks and other documents including the policies of the  
8 school, notice of the policy regarding recording is provided to  
9 parents of students, and notice of such recording is clearly  
10 posted on the door of and inside the school bus.

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

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

22 (o) The use of an eavesdropping camera or audio device  
23 during an ongoing hostage or barricade situation by a law  
24 enforcement officer or individual acting on behalf of a law  
25 enforcement officer when the use of such device is necessary to  
26 protect the safety of the general public, hostages, or law

1 enforcement officers or anyone acting on their behalf;

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

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

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

1 Attorney but shall include, at a minimum, the following  
2 information about each specified individual whom the law  
3 enforcement officer believes will commit a drug offense:

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

5 (B) a physical description; or

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

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

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

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

26 (C) a reasonable period of time but in no event longer

1 than 24 consecutive hours.

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

10 (A) a drug offense;

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

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

23 (5) Compliance with the provisions of this subsection is a  
24 prerequisite to the admissibility in evidence of any part of  
25 the contents of any wire, electronic or oral communication that  
26 has been intercepted as a result of this exception, but nothing



1 in this subsection shall be deemed to prevent a court from  
2 otherwise excluding the evidence on any other ground, nor shall  
3 anything in this subsection be deemed to prevent a court from  
4 independently reviewing the admissibility of the evidence for  
5 compliance with the Fourth Amendment to the U.S. Constitution  
6 or with Article I, Section 6 of the Illinois Constitution.

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

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

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

26 "Forcible felony" includes and is limited to those

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

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

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

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