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## CRIMINAL OFFENSES

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(720 ILCS 5/Art. 14 heading)

ARTICLE 14. EAVESDROPPING

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(720 ILCS 5/14-1) (from Ch. 38, par. 14-1)

Sec. 14-1. Definition.

(a) Eavesdropping device.

An eavesdropping device is any device capable of being used to hear or record oral conversation or intercept, retain, or transcribe electronic communications whether such conversation or electronic communication is conducted in person, by telephone, or by any other means; Provided, however, that this definition shall not include devices used for the restoration of the deaf or hard-of-hearing to normal or partial hearing.

(b) Eavesdropper.

An eavesdropper is any person, including law enforcement officers, who is a principal, as defined in this Article, or who operates or participates in the operation of any eavesdropping device contrary to the provisions of this Article.

(c) Principal.

A principal is any person who:

- (1) Knowingly employs another who illegally uses an eavesdropping device in the course of such employment; or
  - (2) Knowingly derives any benefit or information from the illegal use of an eavesdropping device by another; or
  - (3) Directs another to use an eavesdropping device illegally on his behalf.
- (d) Conversation.

For the purposes of this Article, the term conversation means any oral communication between 2 or more persons regardless of whether one or more of the parties intended their communication to be of a private nature under circumstances justifying that expectation.

(e) Electronic communication.



For purposes of this Article, the term electronic communication means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or part by a wire, radio, pager, computer, electromagnetic, photo electronic or photo optical system, where the sending and receiving parties intend the electronic communication to be private and the interception, recording, or transcription of the electronic communication is accomplished by a device in a surreptitious manner contrary to the provisions of this Article. Electronic communication does not include any communication from a tracking device.

(f) Bait car.

For purposes of this Article, the term bait car means any motor vehicle that is not occupied by a law enforcement officer and is used by a law enforcement agency to deter, detect, identify, and assist in the apprehension of an auto theft suspect in the act of stealing a motor vehicle.

(Source: P.A. 95-258, eff. 1-1-08.)

(720 ILCS 5/14-2) (from Ch. 38, par. 14-2)

Sec. 14-2. Elements of the offense; affirmative defense.

(a) A person commits eavesdropping when he:

(1) Knowingly and intentionally uses an eavesdropping device for the purpose of hearing or recording all or any part of any conversation or intercepts, retains, or transcribes electronic communication unless he does so (A) with the consent of all of the parties to such conversation or electronic communication or (B) in accordance with Article 108A or Article 108B of the "Code of Criminal Procedure of 1963", approved August 14, 1963, as amended; or

(2) Manufactures, assembles, distributes, or possesses any electronic, mechanical, eavesdropping, or other device knowing that or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious hearing or recording of oral conversations or the interception, retention, or transcription of electronic communications and the intended or actual use of the device is contrary to the provisions of this Article; or

(3) Uses or divulges, except as authorized by this Article or by Article 108A or 108B of the "Code of Criminal Procedure of 1963", approved August 14, 1963, as amended, any information which he knows or reasonably should know was obtained through the use of an eavesdropping device.

(b) It is an affirmative defense to a charge brought under this Article relating to the interception of a privileged communication that the person charged:

1. was a law enforcement officer acting pursuant to an order of interception, entered pursuant to Section 108A-1 or 108B-5 of the Code of Criminal Procedure of 1963; and

2. at the time the communication was intercepted, the officer was unaware that the communication was privileged; and

3. stopped the interception within a reasonable time after discovering that the communication was privileged; and

4. did not disclose the contents of the communication.

(c) It is not unlawful for a manufacturer or a supplier of eavesdropping devices, or a provider of wire or electronic communication services, their agents, employees, contractors, or vendors to manufacture, assemble, sell, or possess an eavesdropping device within the normal course of their business

for purposes not contrary to this Article or for law enforcement officers and employees of the Illinois Department of Corrections to manufacture, assemble, purchase, or possess an eavesdropping device in preparation for or within the course of their official duties.

(d) The interception, recording, or transcription of an electronic communication by an employee of a penal institution is not prohibited under this Act, provided that the interception, recording, or transcription is:

- (1) otherwise legally permissible under Illinois law;
- (2) conducted with the approval of the penal institution for the purpose of investigating or enforcing a State criminal law or a penal institution rule or regulation with respect to inmates in the institution; and
- (3) within the scope of the employee's official duties.

For the purposes of this subsection (d), "penal institution" has the meaning ascribed to it in clause (c)(1) of Section 31A-1.1.

(Source: P.A. 94-183, eff. 1-1-06.)

(720 ILCS 5/14-3)

Sec. 14-3. Exemptions. The following activities shall be exempt from the provisions of this Article:

(a) Listening to radio, wireless and television communications of any sort where the same are publicly made;

(b) Hearing conversation when heard by employees of any common carrier by wire incidental to the normal course of their employment in the operation, maintenance or repair of the equipment of such common carrier by wire so long as no information obtained thereby is used or divulged by the hearer;

(c) Any broadcast by radio, television or otherwise whether it be a broadcast or recorded for the purpose of later broadcasts of any function where the public is in attendance and the conversations are overheard incidental to the main purpose for which such broadcasts are then being made;

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

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

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

(g) With prior notification to the State's Attorney of the county in which it is to occur, recording or listening with the aid of any device to any conversation where a law enforcement officer, or any person acting at the direction of law enforcement, is a party to the conversation and has consented to it being intercepted or recorded under circumstances where the use of the device is necessary for the protection of the law enforcement officer or any person acting at the direction of law enforcement, in the

course of an investigation of a forcible felony, a felony offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services under Section 10-9 of this Code, an offense involving prostitution, solicitation of a sexual act, or pandering, a felony violation of the Illinois Controlled Substances Act, a felony violation of the Cannabis Control Act, a felony violation of the Methamphetamine Control and Community Protection Act, any "streetgang related" or "gang-related" felony as those terms are defined in the Illinois Streetgang Terrorism Omnibus Prevention Act, or any felony offense involving any weapon listed in paragraphs (1) through (11) of subsection (a) of Section 24-1 of this Code. Any recording or evidence derived as the result of this exemption shall be inadmissible in any proceeding, criminal, civil or administrative, except (i) where a party to the conversation suffers great bodily injury or is killed during such conversation, or (ii) when used as direct impeachment of a witness concerning matters contained in the interception or recording. The Director of the Department of State Police shall issue regulations as are necessary concerning the use of devices, retention of tape recordings, and reports regarding their use;

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

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

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

(g-6) With approval of the State's Attorney of the county in which it is to occur, recording or listening with the aid of any device to any conversation where a law enforcement officer, or any person acting at the direction of law enforcement, is a party to the conversation and has consented to it being intercepted or recorded in the course of an investigation of involuntary servitude, involuntary sexual servitude of a minor, trafficking in persons for forced labor or services, child pornography, aggravated child pornography, indecent solicitation of a child, child abduction, luring of a minor, sexual exploitation of a child, predatory criminal sexual assault of a child, aggravated criminal sexual abuse in which the victim of the offense was at the time of the commission of the offense under 18 years of age, criminal sexual abuse by force or threat of force in which the victim of the offense was at the time of the commission of the offense under 18 years of age, or aggravated criminal sexual assault in which the victim of the offense was at the time of the commission of the offense under 18 years of age. In all such cases, an application for an order approving the previous or continuing use of an eavesdropping device must be made within 48 hours of the commencement of such use. In the absence of such an order, or upon its denial, any continuing use shall immediately terminate. The Director of State Police shall issue rules as are necessary concerning the use of devices, retention of recordings, and reports regarding their use. Any recording or evidence

obtained or derived in the course of an investigation of involuntary servitude, involuntary sexual servitude of a minor, trafficking in persons for forced labor or services, child pornography, aggravated child pornography, indecent solicitation of a child, child abduction, luring of a minor, sexual exploitation of a child, predatory criminal sexual assault of a child, aggravated criminal sexual abuse in which the victim of the offense was at the time of the commission of the offense under 18 years of age, criminal sexual abuse by force or threat of force in which the victim of the offense was at the time of the commission of the offense under 18 years of age, or aggravated criminal sexual assault in which the victim of the offense was at the time of the commission of the offense under 18 years of age shall, upon motion of the State's Attorney or Attorney General prosecuting any case involving involuntary servitude, involuntary sexual servitude of a minor, trafficking in persons for forced labor or services, child pornography, aggravated child pornography, indecent solicitation of a child, child abduction, luring of a minor, sexual exploitation of a child, predatory criminal sexual assault of a child, aggravated criminal sexual abuse in which the victim of the offense was at the time of the commission of the offense under 18 years of age, criminal sexual abuse by force or threat of force in which the victim of the offense was at the time of the commission of the offense under 18 years of age, or aggravated criminal sexual assault in which the victim of the offense was at the time of the commission of the offense under 18 years of age, be reviewed in camera with notice to all parties present by the court presiding over the criminal case, and, if ruled by the court to be relevant and otherwise admissible, it shall be admissible at the trial of the criminal case. Absent such a ruling, any such recording or evidence shall not be admissible at the trial of the criminal case;

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

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

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

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

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

disposition and an order from the court. Under no circumstances shall any recording be altered or erased prior to the expiration of the designated storage period. Upon completion of the storage period, the recording medium may be erased and reissued for operational use;

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

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

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

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

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

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

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

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

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

(i) soliciting the sale of goods or services;

- (ii) receiving orders for the sale of goods or services;
- (iii) assisting in the use of goods or services; or
- (iv) engaging in the solicitation, administration, or collection of bank or retail credit accounts.

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

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

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

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

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

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

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

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

(Source: P.A. 96-425, eff. 8-13-09; 96-547, eff. 1-1-10; 96-643, eff. 1-1-10; 96-670, eff. 8-25-09; 96-1000, eff. 7-2-10;

96-1425, eff. 1-1-11; 96-1464, eff. 8-20-10; 97-333, eff. 8-12-11.)

(720 ILCS 5/14-3A)

Sec. 14-3A. Recordings, records, and custody.

(a) Any private oral communication intercepted in accordance with subsection (g) of Section 14-3 shall, if practicable, be recorded by tape or other comparable method. The recording shall, if practicable, be done in such a way as will protect it from editing or other alteration. During an interception, the interception shall be carried out by a law enforcement officer, and the officer shall keep a signed, written record, including:

- (1) The day and hours of interception or recording;
- (2) The time and duration of each intercepted communication;
- (3) The parties, if known, to each intercepted communication; and
- (4) A summary of the contents of each intercepted communication.

(b) Both the written record of the interception or recording and any and all recordings of the interception or recording shall immediately be inventoried and shall be maintained where the chief law enforcement officer of the county in which the interception or recording occurred directs. The written records of the interception or recording conducted under subsection (g) of Section 14-3 shall not be destroyed except upon an order of a court of competent jurisdiction and in any event shall be kept for 10 years.

(Source: P.A. 88-677, eff. 12-15-94.)

(720 ILCS 5/14-3B)

Sec. 14-3B. Notice of interception or recording.

(a) Within a reasonable time, but not later than 60 days after the termination of the investigation for which the interception or recording was conducted, or immediately upon the initiation of criminal proceedings, the person who was the subject of an interception or recording under subsection (g) of Section 14-3 shall be served with an inventory that shall include:

- (1) Notice to any person who was the subject of the interception or recording;
- (2) Notice of any interception or recording if the defendant was arrested or indicted or otherwise charged as a result of the interception of his or her private oral communication;
- (3) The date of the interception or recording;
- (4) The period of interception or recording; and
- (5) Notice of whether during the period of interception or recording devices were or were not used to overhear and record various conversations and whether or not the conversations are recorded.

(b) A court of competent jurisdiction, upon filing of a motion, may in its discretion make available to those persons or their attorneys for inspection those portions of the intercepted communications as the court determines to be in the interest of justice.

(Source: P.A. 88-677, eff. 12-15-94.)

(720 ILCS 5/14-4) (from Ch. 38, par. 14-4)

Sec. 14-4. Sentence.

(a) Eavesdropping, for a first offense, is a Class 4 felony and, for a second or subsequent offense, is a Class 3 felony.

(b) The eavesdropping of an oral conversation or an electronic communication between any law enforcement officer, State's Attorney, Assistant State's Attorney, the Attorney General, Assistant Attorney General, or a judge, while in the performance of his or her official duties, if not authorized by this Article or proper court order, is a Class 1 felony.

(Source: P.A. 91-357, eff. 7-29-99; 91-657, eff. 1-1-00.)

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

Sec. 14-5. Evidence inadmissible.

Any evidence obtained in violation of this Article is not admissible in any civil or criminal trial, or any administrative or legislative inquiry or proceeding, nor in any grand jury proceedings; provided, however, that so much of the contents of an alleged unlawfully intercepted, overheard or recorded conversation as is clearly relevant, as determined as a matter of law by the court in chambers, to the proof of such allegation may be admitted into evidence in any criminal trial or grand jury proceeding brought against any person charged with violating any provision of this Article.

(Source: Laws 1965, p. 3198.)

(720 ILCS 5/14-6) (from Ch. 38, par. 14-6)

Sec. 14-6. Civil remedies to injured parties. (1) Any or all parties to any conversation upon which eavesdropping is practiced contrary to this Article shall be entitled to the following remedies:

(a) To an injunction by the circuit court prohibiting further eavesdropping by the eavesdropper and by or on behalf of his principal, or either;

(b) To all actual damages against the eavesdropper or his principal or both;

(c) To any punitive damages which may be awarded by the court or by a jury;

(d) To all actual damages against any landlord, owner or building operator, or any common carrier by wire who aids, abets, or knowingly permits the eavesdropping concerned;

(e) To any punitive damages which may be awarded by the court or by a jury against any landlord, owner or building operator, or common carrier by wire who aids, abets, or knowingly permits the eavesdropping concerned.

(2) No cause of action shall lie in any court against any common carrier by wire or its officers, agents or employees for providing information, assistance or facilities in accordance with the terms of a court order entered under Article 108A of the Code of Criminal Procedure of 1963.

(Source: P.A. 85-868.)

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

Sec. 14-7. Common carrier to aid in detection.

Subject to regulation by the Illinois Commerce Commission, any common carrier by wire shall, upon request of any subscriber and upon responsible offer to pay the reasonable cost thereof, furnish whatever services may be within its command for the purpose of detecting any eavesdropping involving its wires which are used by said subscriber. All such requests by subscribers shall be kept confidential unless divulgence is authorized in writing by the requesting subscriber.

(Source: Laws 1961, p. 1983.)

(720 ILCS 5/14-8) (from Ch. 38, par. 14-8)

Sec. 14-8. Discovery of eavesdropping device by an individual, common carrier, private investigative agency or non-governmental corporation). Any

agent, officer or employee of a private investigative agency or non-governmental corporation, or of a common carrier by wire, or any individual, who discovers any physical evidence of an eavesdropping device being used which such person does not know to be a legal eavesdropping device shall, within a reasonable time after such discovery disclose the existence of such eavesdropping device to the State's Attorney of the county where such device was found. The State's Attorney shall within a reasonable time notify the person or persons apparently being eavesdropped upon of the existence of that device if the device is illegal. A violation of this Section is a Business Offense for which a fine shall be imposed not to exceed \$500.

(Source: P.A. 79-984; 79-1454.)

(720 ILCS 5/14-9) (from Ch. 38, par. 14-9)

Sec. 14-9. Discovery of eavesdropping device by common carrier by wire - disclosure to subscriber.) Any agent, officer or employee of any common carrier by wire who discovers any physical evidence of an eavesdropping device which such person does not know to be a legal eavesdropping device shall, within a reasonable time after such discovery, disclose the existence of the eavesdropping device to the State's Attorney of the County where such device was found. The State's Attorney shall within a reasonable time notify the person or persons apparently being eavesdropped upon of the existence of that device if the device is illegal. A violation of this Section is a Business Offense for which a fine shall be imposed not to exceed \$500.

(Source: P.A. 79-985.)

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