



Rep. Scott Drury

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LRB098 03640 MRW 56840 a

1 AMENDMENT TO HOUSE BILL 802

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 802 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 2012 is amended by  
5 changing Section 14-3 as follows:

6 (720 ILCS 5/14-3)

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

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

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

16 (c) Any broadcast by radio, television or otherwise whether

1 it be a broadcast or recorded for the purpose of later  
2 broadcasts of any function where the public is in attendance  
3 and the conversations are overheard incidental to the main  
4 purpose for which such broadcasts are then being made;

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

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

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

1 (g) With prior notification to the State's Attorney of the  
2 county in which it is to occur, recording or listening with the  
3 aid of any device to any conversation where a law enforcement  
4 officer, or any person acting at the direction of law  
5 enforcement, is a party to the conversation and has consented  
6 to it being intercepted or recorded under circumstances where  
7 the use of the device is necessary for the protection of the  
8 law enforcement officer or any person acting at the direction  
9 of law enforcement, in the course of an investigation of a  
10 forcible felony, a felony offense of involuntary servitude,  
11 involuntary sexual servitude of a minor, or trafficking in  
12 persons under Section 10-9 of this Code, an offense involving  
13 prostitution, solicitation of a sexual act, or pandering, a  
14 felony violation of the Illinois Controlled Substances Act, a  
15 felony violation of the Cannabis Control Act, a felony  
16 violation of the Methamphetamine Control and Community  
17 Protection Act, any "streetgang related" or "gang-related"  
18 felony as those terms are defined in the Illinois Streetgang  
19 Terrorism Omnibus Prevention Act, or any felony offense  
20 involving any weapon listed in paragraphs (1) through (11) of  
21 subsection (a) of Section 24-1 of this Code. Any recording or  
22 evidence derived as the result of this exemption shall be  
23 inadmissible in any proceeding, criminal, civil or  
24 administrative, except (i) where a party to the conversation  
25 suffers great bodily injury or is killed during such  
26 conversation, or (ii) when used as direct impeachment of a

1 witness concerning matters contained in the interception or  
2 recording. The Director of the Department of State Police shall  
3 issue regulations as are necessary concerning the use of  
4 devices, retention of tape recordings, and reports regarding  
5 their use;

6 (g-5) With approval of the State's Attorney of the county  
7 in which it is to occur, recording or listening with the aid of  
8 any device to any conversation where a law enforcement officer,  
9 or any person acting at the direction of law enforcement, is a  
10 party to the conversation and has consented to it being  
11 intercepted or recorded in the course of an investigation of  
12 any offense defined in Article 29D of this Code. In all such  
13 cases, an application for an order approving the previous or  
14 continuing use of an eavesdropping device must be made within  
15 48 hours of the commencement of such use. In the absence of  
16 such an order, or upon its denial, any continuing use shall  
17 immediately terminate. The Director of State Police shall issue  
18 rules as are necessary concerning the use of devices, retention  
19 of tape recordings, and reports regarding their use.

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

1 admissible at the trial of the criminal case.

2 This subsection (g-5) is inoperative on and after January  
3 1, 2005. No conversations recorded or monitored pursuant to  
4 this subsection (g-5) shall be inadmissible in a court of law  
5 by virtue of the repeal of this subsection (g-5) on January 1,  
6 2005;

7 (g-6) With approval of the State's Attorney of the county  
8 in which it is to occur, recording or listening with the aid of  
9 any device to any conversation where a law enforcement officer,  
10 or any person acting at the direction of law enforcement, is a  
11 party to the conversation and has consented to it being  
12 intercepted or recorded in the course of an investigation of  
13 involuntary servitude, involuntary sexual servitude of a  
14 minor, trafficking in persons, child pornography, aggravated  
15 child pornography, indecent solicitation of a child, child  
16 abduction, luring of a minor, sexual exploitation of a child,  
17 predatory criminal sexual assault of a child, aggravated  
18 criminal sexual abuse in which the victim of the offense was at  
19 the time of the commission of the offense under 18 years of  
20 age, criminal sexual abuse by force or threat of force in which  
21 the victim of the offense was at the time of the commission of  
22 the offense under 18 years of age, or aggravated criminal  
23 sexual assault in which the victim of the offense was at the  
24 time of the commission of the offense under 18 years of age. In  
25 all such cases, an application for an order approving the  
26 previous or continuing use of an eavesdropping device must be

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

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

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

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

1 responses to requests for emergency assistance;

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

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

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

25 (i) Recording of a conversation made by or at the request  
26 of a person, not a law enforcement officer or agent of a law



1 enforcement officer, who is a party to the conversation, under  
2 reasonable suspicion that another party to the conversation is  
3 committing, is about to commit, or has committed a criminal  
4 offense against the person or a member of his or her immediate  
5 household, and there is reason to believe that evidence of the  
6 criminal offense may be obtained by the recording;

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

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

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

26 No communication or conversation or any part, portion, or

1 aspect of the communication or conversation made, acquired, or  
2 obtained, directly or indirectly, under this exemption (j), may  
3 be, directly or indirectly, furnished to any law enforcement  
4 officer, agency, or official for any purpose or used in any  
5 inquiry or investigation, or used, directly or indirectly, in  
6 any administrative, judicial, or other proceeding, or divulged  
7 to any third party.

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

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

24 Business entities that use a telephone monitoring or  
25 telephone recording system pursuant to this exemption (j) shall  
26 provide their employees or agents with access to personal-only

1 telephone lines which may be pay telephones, that are not  
2 subject to telephone monitoring or telephone recording.

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

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

7 (ii) receiving orders for the sale of goods or  
8 services;

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

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

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

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

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

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

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

25           (n) Recording or listening to an audio transmission from a  
26 microphone placed by a person under the authority of a law

1 enforcement agency inside a bait car surveillance vehicle while  
2 simultaneously capturing a photographic or video image;

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

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

17 (q) (1) With prior request to and verbal approval of the  
18 State's Attorney of the county in which the conversation is  
19 anticipated to occur, recording or listening with the aid of an  
20 eavesdropping device to a conversation in which a law  
21 enforcement officer, or any person acting at the direction of a  
22 law enforcement officer, is a party to the conversation and has  
23 consented to the conversation being intercepted or recorded in  
24 the course of an investigation of a drug offense. The State's  
25 Attorney may grant this verbal approval only after determining  
26 that reasonable cause exists to believe that a drug offense

1 will be committed by a specified individual or individuals  
2 within a designated period of time.

3 (2) Request for approval. To invoke the exception contained  
4 in this subsection (q), a law enforcement officer shall make a  
5 written or verbal request for approval to the appropriate  
6 State's Attorney. This request for approval shall include  
7 whatever information is deemed necessary by the State's  
8 Attorney but shall include, at a minimum, the following  
9 information about each specified individual whom the law  
10 enforcement officer believes will commit a drug offense:

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

12 (B) a physical description; or

13 (C) failing either (A) or (B) of this paragraph (2),  
14 any other supporting information known to the law  
15 enforcement officer at the time of the request that gives  
16 rise to reasonable cause to believe the individual will  
17 commit a drug offense.

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

21 (A) a recording or interception conducted by a  
22 specified law enforcement officer or person acting at the  
23 direction of a law enforcement officer;

24 (B) recording or intercepting conversations with the  
25 individuals specified in the request for approval,  
26 provided that the verbal approval shall be deemed to

1 include the recording or intercepting of conversations  
2 with other individuals, unknown to the law enforcement  
3 officer at the time of the request for approval, who are  
4 acting in conjunction with or as co-conspirators with the  
5 individuals specified in the request for approval in the  
6 commission of a drug offense;

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

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

17 (A) a drug offense;

18 (B) a forcible felony committed directly in the course  
19 of the investigation of a drug offense for which verbal  
20 approval was given to record or intercept a conversation  
21 under this subsection (q); or

22 (C) any other forcible felony committed while the  
23 recording or interception was approved in accordance with  
24 this Section (q), but for this specific category of  
25 prosecutions, only if the law enforcement officer or person  
26 acting at the direction of a law enforcement officer who

1           has consented to the conversation being intercepted or  
2           recorded suffers great bodily injury or is killed during  
3           the commission of the charged forcible felony.

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

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

26          (7) Definitions. For the purposes of this subsection (q)



1 only:

2 "Drug offense" includes and is limited to a felony  
3 violation of one of the following: (A) the Illinois  
4 Controlled Substances Act, (B) the Cannabis Control Act,  
5 and (C) the Methamphetamine Control and Community  
6 Protection Act.

7 "Forcible felony" includes and is limited to those  
8 offenses contained in Section 2-8 of the Criminal Code of  
9 1961 as of the effective date of this amendatory Act of the  
10 97th General Assembly, and only as those offenses have been  
11 defined by law or judicial interpretation as of that date.

12 "State's Attorney" includes and is limited to the  
13 State's Attorney or an assistant State's Attorney  
14 designated by the State's Attorney to provide verbal  
15 approval to record or intercept conversations under this  
16 subsection (q).

17 (8) Sunset. This subsection (q) is inoperative on and after  
18 January 1, 2015. No conversations intercepted pursuant to this  
19 subsection (q), while operative, shall be inadmissible in a  
20 court of law by virtue of the inoperability of this subsection  
21 (q) on January 1, 2015; and ~~and~~

22 (r) Electronic recordings, including but not limited to,  
23 motion picture, videotape, digital, or other visual or audio  
24 recording, made of a lineup under Section 107A-2 of the Code of  
25 Criminal Procedure of 1963.

26 (Source: P.A. 97-333, eff. 8-12-11; 97-846, eff. 1-1-13;

1 97-897, eff. 1-1-13; 98-463, eff. 8-16-13.)

2 Section 10. The Code of Criminal Procedure of 1963 is  
3 amended by adding Sections 107A-0.1 and 107A-2 as follows:

4 (725 ILCS 5/107A-0.1 new)

5 Sec. 107A-0.1. Definitions.

6 For the purposes of this Article:

7 "Eyewitness" means a person whose identification by  
8 sight of another person may be relevant in a criminal  
9 proceeding.

10 "Filler" means a person or a photograph of a person who  
11 is not suspected of an offense and is included in a lineup.

12 "Independent administrator" means a lineup  
13 administrator who is not participating in the  
14 investigation of the criminal offense and is unaware of  
15 which person in the lineup is the suspected perpetrator.

16 "Lineup" includes a photo lineup or live lineup.

17 "Lineup administrator" means the person who conducts a  
18 lineup.

19 "Live lineup" means a procedure in which a group of  
20 persons is displayed to an eyewitness for the purpose of  
21 determining if the eyewitness is able to identify the  
22 perpetrator of a crime, but does not include a showup.

23 "Photo lineup" means a procedure in which photographs  
24 are displayed to an eyewitness for the purpose of

1 determining if the eyewitness is able to identify the  
2 perpetrator of a crime.

3 "Sequential lineup" means a live or photo lineup in  
4 which each person or photograph is presented to an  
5 eyewitness separately, in a previously determined order,  
6 and removed from the eyewitness' view before the next  
7 person or photograph is presented, in order to determine if  
8 the eyewitness is able to identify the perpetrator of a  
9 crime.

10 "Showup" means a procedure in which a suspected  
11 perpetrator is transported to or near a crime scene for the  
12 purpose of obtaining an immediate identification.

13 "Simultaneous lineup" means a live or photo lineup in  
14 which a group of persons or array of photographs is  
15 presented simultaneously to an eyewitness for the purpose  
16 of determining if the eyewitness is able to identify the  
17 perpetrator of a crime.

18 (725 ILCS 5/107A-2 new)

19 Sec. 107A-2. Lineup procedure.

20 (a) All lineups shall be conducted using one of the  
21 following methods:

22 (1) An independent administrator.

23 (2) An automated computer program or other device that  
24 can automatically display a photo lineup to an eyewitness  
25 in a manner that prevents the lineup administrator from

1 seeing which photograph or photographs the eyewitness is  
2 viewing until after the lineup is completed. The automated  
3 computer program may present the photographs to the  
4 eyewitness simultaneously or sequentially, consistent with  
5 the law enforcement agency guidelines required under  
6 subsection (b) of this Section.

7 (3) A procedure in which photographs are placed in  
8 folders, randomly numbered, and shuffled and then  
9 presented to an eyewitness such that the lineup  
10 administrator cannot see or know which photograph or  
11 photographs are being presented to the eyewitness until  
12 after the procedure is completed. The photographs may be  
13 presented to the eyewitness simultaneously or  
14 sequentially, consistent with the law enforcement agency  
15 guidelines required under subsection (b) of this Section.

16 (4) Any other procedure that prevents the lineup  
17 administrator from knowing the identity of the suspected  
18 perpetrator or seeing or knowing the photographs being  
19 presented to the eyewitness until after the procedure is  
20 completed.

21 (b) Each law enforcement agency shall adopt written  
22 guidelines setting forth when, if at all, simultaneous lineups  
23 shall be conducted and when, if at all, sequential lineups  
24 shall be conducted. This subsection does not establish a  
25 preference for whether a law enforcement agency should conduct  
26 simultaneous lineups or sequential lineups. Whether and when to

1 conduct simultaneous lineups or sequential lineups is at the  
2 discretion of each law enforcement agency.

3 (c) If a lineup administrator conducts a sequential lineup,  
4 the following shall apply:

5 (1) Solely at the eyewitness' request, the lineup  
6 administrator may present a person or photograph to the  
7 eyewitness an additional time but only after the eyewitness  
8 has first viewed each person or photograph one time.

9 (2) If the eyewitness identifies a person as a  
10 perpetrator, the lineup administrator shall continue to  
11 sequentially present the remaining persons or photographs  
12 to the eyewitness until the eyewitness has viewed each  
13 person or photograph.

14 (d) Before a lineup is conducted:

15 (1) The eyewitness shall be instructed that:

16 (A) if recording the lineup is practical, an audio  
17 and video recording of the lineup will be made for the  
18 purpose of accurately documenting all statements made  
19 by the eyewitness, unless the eyewitness refuses to the  
20 recording of the lineup, and that if a recording is  
21 made it will be of the persons in the lineup and the  
22 eyewitness;

23 (B) the perpetrator may or may not be presented in  
24 the lineup;

25 (C) if an independent administrator is conducting  
26 the lineup, the independent administrator does not

1 know the suspected perpetrator's identity;

2 (D) the eyewitness should not feel compelled to  
3 make an identification;

4 (E) it is as important to exclude innocent persons  
5 as it is to identify a perpetrator; and

6 (F) the investigation will continue whether or not  
7 an identification is made.

8 (2) The eyewitness shall acknowledge in writing the  
9 receipt of the instructions required under this subsection  
10 and, if applicable, the refusal to be recorded. If the  
11 eyewitness refuses to sign the acknowledgement, the lineup  
12 administrator shall note the refusal of the eyewitness to  
13 sign the acknowledgement and shall also sign the  
14 acknowledgement.

15 (e) In conducting a lineup:

16 (1) The lineup administrator shall separate all  
17 eyewitnesses in order to discourage them from conferring  
18 with one another before and during the lineup procedure.  
19 Each eyewitness shall be given instructions regarding the  
20 identification procedures without other eyewitnesses  
21 present.

22 (2) The lineup shall be composed so that the fillers  
23 generally resemble the eyewitness's description of the  
24 perpetrator, while ensuring that the suspected perpetrator  
25 does not unduly stand out from the fillers. In addition:

26 (A) All fillers selected shall resemble, as much as

1           practicable, the eyewitness's description of the  
2           perpetrator in significant features, including any  
3           unique or unusual features.

4           (B) At least 5 fillers shall be included in a photo  
5           lineup, in addition to the suspected perpetrator.

6           (C) At least 5 fillers shall be included in a live  
7           lineup, in addition to the suspected perpetrator.

8           (D) If the eyewitness has previously viewed a photo  
9           lineup or live lineup in connection with the  
10           identification of another person suspected of  
11           involvement in the offense, the fillers in the lineup  
12           in which the current suspected perpetrator  
13           participates shall be different from the fillers used  
14           in the prior lineups.

15           (3) Only one suspected perpetrator shall be included in  
16           a lineup.

17           (4) If there are multiple eyewitnesses, subject to the  
18           requirements in subsection (a) of this Section and to the  
19           extent possible, the suspected perpetrator shall be placed  
20           in a different position in the lineup or photo array for  
21           each eyewitness.

22           (5) Nothing shall be communicated to the eyewitness  
23           regarding the suspected perpetrator's position in the  
24           lineup or regarding anything that may influence the  
25           eyewitness's identification.

26           (6) No writings or information concerning any previous

1 arrest, indictment, or conviction of the suspected  
2 perpetrator shall be visible or made known to the  
3 eyewitness.

4 (7) If a photo lineup, the photograph of the suspected  
5 perpetrator shall be contemporary and, to the extent  
6 practicable, shall resemble the suspected perpetrator's  
7 appearance at the time of the offense.

8 (8) If a live lineup, any identifying actions, such as  
9 speech, gestures, or other movements, shall be performed by  
10 all lineup participants.

11 (9) If a live lineup, all lineup participants must be  
12 out of view of the eyewitness prior to the lineup.

13 (10) The lineup administrator shall obtain and  
14 document a clear statement from the eyewitness, at the time  
15 of the identification and in the eyewitness's own words, as  
16 to the eyewitness's confidence level that the person  
17 identified in a lineup is the perpetrator. When  
18 practicable, an audio and video recording of the statement  
19 shall be made.

20 (11) If the eyewitness identifies a person as the  
21 perpetrator, the eyewitness shall not be provided any  
22 information concerning the person before the lineup  
23 administrator obtains the eyewitness's statement about his  
24 or her confidence level in the selection.

25 (12) Unless otherwise allowed under subsection (a) of  
26 this Section, there shall not be anyone present during a



1 lineup who knows the suspected perpetrator's identity,  
2 except the eyewitness and suspected perpetrator's counsel  
3 as required by law.

4 (f) The lineup administrator shall make an official report  
5 of all lineups, which shall include all of the following  
6 information:

7 (1) All identification and non-identification results  
8 obtained during the lineup, signed by the eyewitness,  
9 including the eyewitness's confidence level statement. If  
10 the eyewitness refuses to sign, the lineup administrator  
11 shall note the refusal of the eyewitness to sign the  
12 results and shall also sign the notation.

13 (2) The names of all persons who viewed the lineup.

14 (3) The names of all law enforcement officers and  
15 counsel present during the lineup.

16 (4) The date, time, and location of the lineup.

17 (5) The words used by the eyewitness in an  
18 identification, including words that describe the  
19 eyewitness's certainty of identification.

20 (6) Whether it was a photo lineup or live lineup and  
21 how many persons or photographs were presented in the  
22 lineup.

23 (7) The sources of all persons or photographs used as  
24 fillers in the lineup.

25 (8) In a photo lineup, the actual photographs shown to  
26 the eyewitness.

1           (9) In a live lineup, a photograph or other visual  
2           recording of the lineup that includes all persons who  
3           participated in the lineup.

4           (10) If applicable, the eyewitness's refusal to be  
5           recorded.

6           (g) Unless it is not practical or the eyewitness refuses, a  
7           video record of lineup procedures shall be made.

8           (1) If a video record is not practical or the  
9           eyewitness refuses to allow a video record to be made:

10           (A) the reasons or the refusal shall be documented  
11           in the official report required under subsection (f) of  
12           this Section;

13           (B) an audio record shall be made, if practical;  
14           and

15           (C) if a live lineup, the lineup shall be  
16           photographed.

17           (2) If an audio record is not practical, the reasons  
18           shall be documented in the official report required under  
19           subsection (f) of this Section.

20           (h) The photographs, recordings, and the official report of  
21           the lineup required by this Section shall be disclosed to the  
22           accused and his or her defense counsel during discovery  
23           proceedings as provided in Illinois Supreme Court Rules. All  
24           photographs of suspected perpetrators shown to an eyewitness  
25           during a lineup shall be disclosed to the accused and his or  
26           her defense counsel during discovery proceedings as provided in

1 Illinois Supreme Court Rules.

2 (i) All of the following shall be available as consequences  
3 of compliance or noncompliance with the requirements of this  
4 Section:

5 (1) Failure to comply with any of the requirements of  
6 this Section shall be a factor to be considered by the  
7 court in adjudicating a motion to suppress an eyewitness  
8 identification or any other motion to bar an eyewitness  
9 identification.

10 (2) When evidence of compliance or noncompliance with  
11 the requirements of this Section has been presented at  
12 trial, the jury shall be instructed that it may consider  
13 credible evidence of compliance or noncompliance to  
14 determine the reliability of an eyewitness identification.

15 (725 ILCS 5/107A-5 rep.)

16 (725 ILCS 5/107A-10 rep.)

17 Section 15. The Code of Criminal Procedure of 1963 is  
18 amended by repealing Sections 107A-5 and 107A-10."