



Rep. Scott Drury

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LRB098 03640 MRW 58502 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's 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 presented to the eyewitness at, or near, a
12 crime scene for the purpose of obtaining an immediate
13 identification.

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

19 (725 ILCS 5/107A-2 new)

20 Sec. 107A-2. Lineup procedure.

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

23 (1) An independent administrator.

24 (2) An automated computer program or other device that
25 can automatically display a photo lineup to an eyewitness

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

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

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

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

1 simultaneous lineups or sequential lineups. Whether and when to
2 conduct simultaneous lineups or sequential lineups is at the
3 discretion of each law enforcement agency. If, after the
4 effective date of this amendatory Act of the 98th General
5 Assembly, a method of conducting a lineup different from a
6 simultaneous or sequential lineup is determined by the Illinois
7 Supreme Court to be sufficiently established to have gained
8 general acceptance as a reliable method for eyewitness
9 identifications and provides more accurate results than
10 simultaneous or sequential lineups, a law enforcement agency
11 may adopt written guidelines setting forth when, if at all,
12 this different method of conducting lineups shall be used and,
13 when feasible, the provisions of subsection (d) of this Section
14 shall apply to the use of these methods.

15 (c) On and after the effective date of this amendatory Act
16 of the 98th General Assembly, there is no preference as to
17 whether a law enforcement agency conducts a live lineup or a
18 photo lineup and to the extent that the common law directs
19 otherwise, this direction is abrogated.

20 (d) If a lineup administrator conducts a sequential lineup,
21 the following shall apply:

22 (1) Solely at the eyewitness's request, the lineup
23 administrator may present a person or photograph to the
24 eyewitness an additional time but only after the eyewitness
25 has first viewed each person or photograph one time.

26 (2) If the eyewitness identifies a person as a

1 perpetrator, the lineup administrator shall continue to
2 sequentially present the remaining persons or photographs
3 to the eyewitness until the eyewitness has viewed each
4 person or photograph.

5 (e) Before a lineup is conducted:

6 (1) The eyewitness shall be instructed that:

7 (A) if recording the lineup is practical, an audio
8 and video recording of the lineup will be made for the
9 purpose of accurately documenting all statements made
10 by the eyewitness, unless the eyewitness refuses to the
11 recording of the lineup, and that if a recording is
12 made it will be of the persons in the lineup and the
13 eyewitness;

14 (B) the perpetrator may or may not be presented in
15 the lineup;

16 (C) if an independent administrator is conducting
17 the lineup, the independent administrator does not
18 know the suspected perpetrator's identity;

19 (D) the eyewitness should not feel compelled to
20 make an identification;

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

23 (F) the investigation will continue whether or not
24 an identification is made.

25 (2) The eyewitness shall acknowledge in writing the
26 receipt of the instructions required under this subsection

1 and, if applicable, the refusal to be recorded. If the
2 eyewitness refuses to sign the acknowledgement, the lineup
3 administrator shall note the refusal of the eyewitness to
4 sign the acknowledgement and shall also sign the
5 acknowledgement.

6 (f) In conducting a lineup:

7 (1) When practicable, the lineup administrator shall
8 separate all eyewitnesses in order to prevent the
9 eyewitnesses from conferring with one another before and
10 during the lineup procedure. If separating the
11 eyewitnesses is not practicable, the lineup administrator
12 shall ensure that all eyewitnesses are monitored and that
13 they do not confer with one another before and during the
14 lineup.

15 (2) Each eyewitness shall perform the identification
16 procedures without any other eyewitness present. Each
17 eyewitness shall be given instructions regarding the
18 identification procedures without other eyewitnesses
19 present.

20 (3) The lineup shall be composed to ensure that the
21 suspected perpetrator does not unduly stand out from the
22 fillers. In addition:

23 (A) Only one suspected perpetrator shall be
24 included in a lineup.

25 (B) If the eyewitness has provided a description of
26 the perpetrator, all fillers selected shall resemble,

1 as much as practicable, the eyewitness's description
2 of the perpetrator in his or her significant features.

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

5 (D) When practicable, at least 5 fillers shall be
6 included in a live lineup, in addition to the suspected
7 perpetrator, but in no event shall there be less than 3
8 fillers in addition to the suspected perpetrator.

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

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

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

25 (6) No writings or information concerning any previous
26 arrest, indictment, or conviction of the suspected

1 perpetrator shall be visible or made known to the
2 eyewitness.

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

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

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

12 (10) If an identification is made, the lineup
13 administrator shall obtain and document a statement from
14 the eyewitness at the time of the identification and in the
15 eyewitness's own words as to the eyewitness's certainty of
16 the identification. Based on the eyewitness's statement,
17 the lineup administrator shall set forth his or her
18 determination as to whether the identification is positive
19 or tentative. If the eyewitness identifies a person as the
20 perpetrator, the eyewitness shall not be provided any
21 information concerning the person before the eyewitness's
22 statement is made. When practicable, an audio or video
23 recording of the statement shall be made.

24 (11) If the eyewitness identifies a person as the
25 perpetrator, the eyewitness shall not be provided any
26 information concerning the person before the lineup

1 administrator obtains the eyewitness's statement about his
2 or her confidence in the selection.

3 (12) Unless otherwise allowed under subsection (a) of
4 this Section, there shall not be anyone present during a
5 lineup who knows the suspected perpetrator's identity,
6 except the eyewitness and suspected perpetrator's counsel
7 if required by law.

8 (g) The lineup administrator shall make an official report
9 of all lineups, which shall include all of the following
10 information:

11 (1) All identification and non-identification results
12 obtained during the lineup, signed by the eyewitness,
13 including the eyewitness's confidence statement as
14 required under paragraph (10) of subsection (f) of this
15 Section. If the eyewitness refuses to sign, the lineup
16 administrator shall note the refusal of the eyewitness to
17 sign the results and shall also sign the notation.

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

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

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

22 (5) The words used by the eyewitness in an
23 identification, including words that describe the
24 eyewitness's certainty of identification.

25 (6) Whether it was a photo lineup or live lineup and
26 how many persons or photographs were presented in the

1 lineup.

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

4 (8) In a photo lineup, the actual photographs shown to
5 the eyewitness.

6 (9) In a live lineup, a photograph or other visual
7 recording of the lineup that includes all persons who
8 participated in the lineup.

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

11 (11) If applicable, the reason for any
12 impracticability in strict compliance with this Section.

13 (h) Unless it is not practical or the eyewitness refuses, a
14 video record of all lineup procedures shall be made.

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

17 (A) the reasons or the refusal shall be documented
18 in the official report required under subsection (g) of
19 this Section;

20 (B) an audio record shall be made, if practical;
21 and

22 (C) if a live lineup, the lineup shall be
23 photographed.

24 (2) If an audio record is not practical, the reasons
25 shall be documented in the official report required under
26 subsection (g) of this Section.

1 (i) The photographs, recordings, and the official report of
2 the lineup required by this Section shall be disclosed to
3 counsel for the accused as provided by the Illinois Supreme
4 Court Rules regarding discovery. All photographs of suspected
5 perpetrators shown to an eyewitness during a lineup shall be
6 disclosed to counsel for the accused as provided by the
7 Illinois Supreme Court Rules regarding discovery.

8 (j) All of the following shall be available as consequences
9 of compliance or noncompliance with the requirements of this
10 Section:

11 (1) Failure to comply with any of the requirements of
12 this Section shall be a factor to be considered by the
13 court in adjudicating a motion to suppress an eyewitness
14 identification or any other motion to bar an eyewitness
15 identification. These motions shall be in writing and state
16 facts showing how the identification procedure was
17 improper. This paragraph (1) makes no change to existing
18 applicable common law or statutory standards or burdens of
19 proof.

20 (2) When warranted by the evidence presented at trial,
21 the jury shall be instructed that it may consider all the
22 facts and circumstances including compliance or
23 noncompliance with this Section to assist in its weighing
24 of the identification testimony of an eyewitness.

1 (725 ILCS 5/107A-10 rep.)

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