

1 AMENDMENT TO HOUSE BILL 223

2 AMENDMENT NO. _____. Amend House Bill 223 as follows:

3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Illinois Criminal Justice Information
6 Act is amended by adding Section 7.5 as follows:

7 (20 ILCS 3930/7.5 new)

8 Sec. 7.5. Grants for electronic recording equipment.

9 (a) The Authority, from appropriations made to it for
10 that purpose, shall make grants to local law enforcement
11 agencies for the purpose of purchasing equipment for
12 electronic recording of interrogations.

13 (b) The Authority shall promulgate rules to implement
14 this Section.

15 Section 10. The Illinois Police Training Act is amended
16 by adding Section 10.3 as follows:

17 (50 ILCS 705/10.3 new)

18 Sec. 10.3. Training of police officers to conduct
19 electronic interrogations. From appropriations made to it

1 for that purpose, the Board shall initiate, administer, and
2 conduct training programs for permanent police officers,
3 part-time police officers, and recruits on the methods and
4 technical aspects of conducting electronic recordings of
5 interrogations.

6 Section 15. The Juvenile Court Act of 1987 is amended by
7 adding Section 5-401.5 as follows:

8 (705 ILCS 405/5-401.5 new)

9 Sec. 5-401.5. When statements by minor may be used.

10 (a) In this Section, "custodial interrogation" means any
11 interrogation (i) during which a reasonable person in the
12 subject's position would consider himself or herself to be in
13 custody and (ii) during which a question is asked that is
14 reasonably likely to elicit an incriminating response.

15 In this Section, "electronic recording" includes motion
16 picture, audiotape, videotape, or digital recording.

17 In this Section, "place of detention" means a building or
18 a police station that is a place of operation for a municipal
19 police department or county sheriff department or other law
20 enforcement agency at which persons are or may be held in
21 detention in connection with criminal charges against those
22 persons or allegations that those persons are delinquent
23 minors.

24 (b) An oral, written, or sign language statement of a
25 minor who, at the time of the commission of the offense was
26 under the age of 17 years, made as a result of a custodial
27 interrogation conducted at a police station or other place of
28 detention on or after the effective date of this amendatory
29 Act of the 93rd General Assembly shall be presumed to be
30 inadmissible as evidence against the minor in any criminal
31 proceeding or juvenile court proceeding, for an act that if
32 committed by an adult would be brought under Section 9-1,

1 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3, of the Criminal Code
2 of 1961 unless:

3 (1) an electronic recording is made of the
4 custodial interrogation; and

5 (2) the recording is substantially accurate and not
6 intentionally altered.

7 (c) Every electronic recording required under this
8 Section must be preserved until such time as the minor's
9 adjudication for any offense relating to the statement is
10 final and all direct and habeas corpus appeals are exhausted,
11 or the prosecution of such offenses is barred by law.

12 (d) If the court finds, by a preponderance of the
13 evidence, that the minor was subjected to a custodial
14 interrogation in violation of this Section, then any
15 statements made by the minor during or following that
16 non-recorded custodial interrogation, even if otherwise in
17 compliance with this Section, are presumed to be inadmissible
18 in any criminal proceeding or juvenile court proceeding
19 against the minor except for the purposes of impeachment.

20 (e) Nothing in this Section precludes the admission (i)
21 of a statement made by the minor in open court in any
22 criminal proceeding or juvenile court proceeding, before a
23 grand jury, or at a preliminary hearing, (ii) of a statement
24 made during a custodial interrogation that was not recorded
25 as required by this Section because electronic recording was
26 not feasible, (iii) of a voluntary statement, whether or not
27 the result of a custodial interrogation, that has a bearing
28 on the credibility of the accused as a witness, (iv) of a
29 spontaneous statement that is not made in response to a
30 question, (v) of a statement made after questioning that is
31 routinely asked during the processing of the arrest of the
32 suspect, (vi) of a statement made during a custodial
33 interrogation by a suspect who requests, prior to making the
34 statement, to respond to the interrogator's questions only if

1 an electronic recording is not made of the statement,
2 provided that an electronic recording is made of the
3 statement of agreeing to respond to the interrogator's
4 question, only if a recording is not made of the statement,
5 (vii) of a statement made during a custodial interrogation
6 that is conducted out-of-state, (viii) of a statement given
7 at a time when the interrogators are unaware that a death or
8 an act of sexual assault or sexual conduct has in fact
9 occurred, or (ix) of any other statement that may be
10 admissible under law. The State shall bear the burden of
11 proving, by a preponderance of the evidence, that one of the
12 exceptions described in this subsection (e) is applicable.
13 Nothing in this Section precludes the admission of a
14 statement, otherwise inadmissible under this Section, that is
15 used only for impeachment and not as substantive evidence.

16 (f) The presumption of inadmissibility of a statement
17 made by a suspect at a custodial interrogation may be
18 overcome by a preponderance of the evidence that the
19 statement was voluntarily given and is reliable, based on the
20 totality of the circumstances.

21 Section 20. The Criminal Code of 1961 is amended by
22 changing Section 14-3 as follows:

23 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

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

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

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

1 hearer;

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

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

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

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

30 (g) With prior notification to the State's Attorney of
31 the county in which it is to occur, recording or listening
32 with the aid of any device to any conversation where a law
33 enforcement officer, or any person acting at the direction of
34 law enforcement, is a party to the conversation and has

1 consented to it being intercepted or recorded under
2 circumstances where the use of the device is necessary for
3 the protection of the law enforcement officer or any person
4 acting at the direction of law enforcement, in the course of
5 an investigation of a forcible felony, a felony violation of
6 the Illinois Controlled Substances Act, a felony violation of
7 the Cannabis Control Act, or any "streetgang related" or
8 "gang-related" felony as those terms are defined in the
9 Illinois Streetgang Terrorism Omnibus Prevention Act. Any
10 recording or evidence derived as the result of this exemption
11 shall be inadmissible in any proceeding, criminal, civil or
12 administrative, except (i) where a party to the conversation
13 suffers great bodily injury or is killed during such
14 conversation, or (ii) when used as direct impeachment of a
15 witness concerning matters contained in the interception or
16 recording. The Director of the Department of State Police
17 shall issue regulations as are necessary concerning the use
18 of devices, retention of tape recordings, and reports
19 regarding their use;

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

1 Any recording or evidence obtained or derived in the
2 course of an investigation of any offense defined in Article
3 29D of this Code shall, upon motion of the State's Attorney
4 or Attorney General prosecuting any violation of Article 29D,
5 be reviewed in camera with notice to all parties present by
6 the court presiding over the criminal case, and, if ruled by
7 the court to be relevant and otherwise admissible, it shall
8 be admissible at the trial of the criminal case.

9 This subsection (g-5) is inoperative on and after January
10 1, 2005. No conversations recorded or monitored pursuant to
11 this subsection (g-5) shall be inadmissible in a court of law
12 by virtue of the repeal of this subsection (g-5) on January
13 1, 2005.

14 (h) Recordings made simultaneously with a video
15 recording of an oral conversation between a peace officer,
16 who has identified his or her office, and a person stopped
17 for an investigation of an offense under the Illinois Vehicle
18 Code;

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

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

1 business entity when:

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

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

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

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

31 Business entities that use a telephone monitoring or
32 telephone recording system pursuant to this exemption (j)
33 shall provide current and prospective employees with notice
34 that the monitoring or recordings may occur during the course

1 of their employment. The notice shall include prominent
2 signage notification within the workplace.

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

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

- 12 (i) soliciting the sale of goods or services;
- 13 (ii) receiving orders for the sale of goods or
14 services;
- 15 (iii) assisting in the use of goods or services; or
- 16 (iv) engaging in the solicitation, administration,
17 or collection of bank or retail credit accounts.

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

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

33 (Source: P.A. 91-357, eff. 7-29-99; 92-854, eff. 12-5-02.)

1 Section 25. The Code of Criminal Procedure of 1963 is
2 amended by adding Section 103-2.1 as follows:

3 (725 ILCS 5/103-2.1 new)

4 Sec. 103-2.1. When statements by accused may be used.

5 (a) In this Section, "custodial interrogation" means any
6 interrogation during which (i) a reasonable person in the
7 subject's position, innocent of any crime, would consider
8 himself or herself to be in custody and (ii) during which a
9 question is asked that is reasonably likely to elicit an
10 incriminating response.

11 In this Section, "place of detention" means a building or
12 a police station that is a place of operation for a municipal
13 police department or county sheriff department or other law
14 enforcement agency, not a courthouse, that is owned or
15 operated by a law enforcement agency at which persons are or
16 may be held in detention in connection with criminal charges
17 against those persons.

18 In this Section, "electronic recording" includes motion
19 picture, audiotape, or videotape, or digital recording.

20 (b) An oral, written, or sign language statement of an
21 accused made as a result of a custodial interrogation at a
22 police station or other place of detention shall be presumed
23 to be inadmissible as evidence against the accused in any
24 criminal proceeding brought under Section 9-1, 9-1.2, 9-2,
25 9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961
26 unless:

27 (1) an electronic recording is made of the custodial
28 interrogation; and

29 (2) the recording is substantially accurate and not
30 intentionally altered.

31 (c) Every electronic recording required under this
32 Section must be preserved until such time as the defendant's
33 conviction for any offense relating to the statement is final

1 and all direct and habeas corpus appeals are exhausted, or
2 the prosecution of such offenses is barred by law.

3 (d) If the court finds, by a preponderance of the
4 evidence, that the defendant was subjected to a custodial
5 interrogation in violation of this Section prior to the
6 custodial interrogation in violation of this Section, then
7 any statements made by the defendant during or following that
8 non-recorded custodial interrogation, even if otherwise in
9 compliance with this Section, are presumed to be inadmissible
10 in any criminal proceeding against the defendant except for
11 the purposes of impeachment.

12 (e) Nothing in this Section precludes the admission (i)
13 of a statement made by the accused in open court at his or
14 her trial, before a grand jury, or at a preliminary hearing,
15 (ii) of a statement made during a custodial interrogation
16 that was not recorded as required by this Section, because
17 electronic recording was not feasible, (iii) of a voluntary
18 statement, whether or not the result of a custodial
19 interrogation, that has a bearing on the credibility of the
20 accused as a witness, (iv) of a spontaneous statement that is
21 not made in response to a question, (v) of a statement made
22 after questioning that is routinely asked during the
23 processing of the arrest of the suspect, (vi) of a statement
24 made during a custodial interrogation by a suspect who
25 requests, prior to making the statement, to respond to the
26 interrogator's questions only if an electronic recording is
27 not made of the statement, provided that an electronic
28 recording is made of the statement of agreeing to respond to
29 the interrogator's question, only if a recording is not made
30 of the statement, (vii) of a statement made during a
31 custodial interrogation that is conducted out-of-state,
32 (viii) of a statement given at a time when the interrogators
33 are unaware that a death or an act of sexual assault or
34 sexual conduct has in fact occurred, or (ix) of any other

1 statement that may be admissible under law. The State shall
2 bear the burden of proving, by a preponderance of the
3 evidence, that one of the exceptions described in this
4 subsection (e) is applicable. Nothing in this Section
5 precludes the admission of a statement, otherwise
6 inadmissible under this Section, that is used only for
7 impeachment and not as substantive evidence.

8 (f) The presumption of inadmissibility of a statement
9 made by a suspect at a custodial interrogation may be
10 overcome by a preponderance of the evidence that the
11 statement was voluntarily given and is reliable, based on the
12 totality of the circumstances.

13 Section 95. The State Mandates Act is amended by adding
14 Section 8.27 as follows:

15 (30 ILCS 805/8.27 new)

16 Sec. 8.27. Exempt mandate. Notwithstanding Sections 6
17 and 8 of this Act, no reimbursement by the State is required
18 for the implementation of any mandate created by this
19 amendatory Act of the 93rd General Assembly.

20 Section 99. Effective date. Sections 5, 10, 20, and 95
21 of this Act and this Section 99 take effect upon becoming
22 law. Sections 15 and 25 of this Act take effect 2 years
23 after becoming law."