

1 AMENDMENT TO HOUSE BILL 223

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 223, AS AMENDED, as  
3 follows:

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

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

8 (20 ILCS 3930/7.5 new)

9 Sec. 7.5. Grants for electronic recording equipment.

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

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

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

18 (50 ILCS 705/10.3 new)

19 Sec. 10.3. Training of police officers to conduct

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

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

9 (705 ILCS 405/5-401.5 new)

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

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

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

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

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

1 committed by an adult would be brought under Section 9-1,  
2 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3, of the Criminal Code  
3 of 1961 unless:

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

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

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

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

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

1 statement, to respond to the interrogator's questions only if  
2 an electronic recording is not made of the statement,  
3 provided that an electronic recording is made of the  
4 statement of agreeing to respond to the interrogator's  
5 question, only if a recording is not made of the statement,  
6 (vii) of a statement made during a custodial interrogation  
7 that is conducted out-of-state, (viii) of a statement given  
8 at a time when the interrogators are unaware that a death has  
9 in fact 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 (g) Any electronic recording of any statement made by a  
22 minor during a custodial interrogation that is compiled by  
23 any law enforcement agency as required by this Section for  
24 the purposes of fulfilling the requirements of this Section  
25 shall be confidential and exempt from public inspection and  
26 copying, as provided under Section 7 of the Freedom of  
27 Information Act, and the information shall not be transmitted  
28 to anyone except as needed to comply with this Section.

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

31 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

32 Sec. 14-3. Exemptions. The following activities shall

1 be exempt from the provisions of this Article:

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

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

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

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

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

26 (f) Recording or listening with the aid of any device to  
27 incoming telephone calls of phone lines publicly listed or  
28 advertised as consumer "hotlines" by manufacturers or  
29 retailers of food and drug products. Such recordings must be  
30 destroyed, erased or turned over to local law enforcement  
31 authorities within 24 hours from the time of such recording  
32 and shall not be otherwise disseminated. Failure on the part  
33 of the individual or business operating any such recording or  
34 listening device to comply with the requirements of this

1 subsection shall eliminate any civil or criminal immunity  
2 conferred upon that individual or business by the operation  
3 of this Section;

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

28 (g-5) With approval of the State's Attorney of the  
29 county in which it is to occur, recording or listening with  
30 the aid of any device to any conversation where a law  
31 enforcement officer, or any person acting at the direction of  
32 law enforcement, is a party to the conversation and has  
33 consented to it being intercepted or recorded in the course  
34 of an investigation of any offense defined in Article 29D of

1 this Code. In all such cases, an application for an order  
2 approving the previous or continuing use of an eavesdropping  
3 device must be made within 48 hours of the commencement of  
4 such use. In the absence of such an order, or upon its  
5 denial, any continuing use shall immediately terminate. The  
6 Director of State Police shall issue rules as are necessary  
7 concerning the use of devices, retention of tape recordings,  
8 and reports regarding their use.

9 Any recording or evidence obtained or derived in the  
10 course of an investigation of any offense defined in Article  
11 29D of this Code shall, upon motion of the State's Attorney  
12 or Attorney General prosecuting any violation of Article 29D,  
13 be reviewed in camera with notice to all parties present by  
14 the court presiding over the criminal case, and, if ruled by  
15 the court to be relevant and otherwise admissible, it shall  
16 be admissible at the trial of the criminal case.

17 This subsection (g-5) is inoperative on and after January  
18 1, 2005. No conversations recorded or monitored pursuant to  
19 this subsection (g-5) shall be inadmissible in a court of law  
20 by virtue of the repeal of this subsection (g-5) on January  
21 1, 2005.

22 (h) Recordings made simultaneously with a video  
23 recording of an oral conversation between a peace officer,  
24 who has identified his or her office, and a person stopped  
25 for an investigation of an offense under the Illinois Vehicle  
26 Code;

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

1 by the recording; and

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

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

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

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

29 When recording or listening authorized by this subsection  
30 (j) on telephone lines used for marketing or opinion research  
31 or telephone solicitation purposes results in recording or  
32 listening to a conversation that does not relate to marketing  
33 or opinion research or telephone solicitation; the person  
34 recording or listening shall, immediately upon determining

1 that the conversation does not relate to marketing or opinion  
2 research or telephone solicitation, terminate the recording  
3 or listening and destroy any such recording as soon as is  
4 practicable.

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

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

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

- 20 (i) soliciting the sale of goods or services;
- 21 (ii) receiving orders for the sale of goods or  
22 services;
- 23 (iii) assisting in the use of goods or services; or
- 24 (iv) engaging in the solicitation, administration,  
25 or collection of bank or retail credit accounts.

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

34 (k) Electronic recordings, including but not limited to,

1 a motion picture, videotape, digital, or other visual or  
2 audio recording, made of a custodial interrogation of an  
3 individual at a police station or other place of detention by  
4 a law enforcement officer under Section 5-401.5 of the  
5 Juvenile Court Act of 1987 or Section 103-2.1 of the Code of  
6 Criminal Procedure of 1963.

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

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

10 (725 ILCS 5/103-2.1 new)

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

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

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, not a courthouse, that is owned or  
21 operated by a law enforcement agency at which persons are or  
22 may be held in detention in connection with criminal charges  
23 against those persons.

24 In this Section, "electronic recording" includes motion  
25 picture, audiotape, or videotape, or digital recording.

26 (b) An oral, written, or sign language statement of an  
27 accused made as a result of a custodial interrogation at a  
28 police station or other place of detention shall be presumed  
29 to be inadmissible as evidence against the accused in any  
30 criminal proceeding brought under Section 9-1, 9-1.2, 9-2,  
31 9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961  
32 unless:

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

3           (2) the recording is substantially accurate and not  
4           intentionally altered.

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

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

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

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

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

18 (g) Any electronic recording of any statement made by an  
19 accused during a custodial interrogation that is compiled by  
20 any law enforcement agency as required by this Section for  
21 the purposes of fulfilling the requirements of this Section  
22 shall be confidential and exempt from public inspection and  
23 copying, as provided under Section 7 of the Freedom of  
24 Information Act, and the information shall not be transmitted  
25 to anyone except as needed to comply with this Section.

26 Section 95. The State Mandates Act is amended by adding  
27 Section 8.27 as follows:

28 (30 ILCS 805/8.27 new)

29 Sec. 8.27. Exempt mandate. Notwithstanding Sections 6  
30 and 8 of this Act, no reimbursement by the State is required  
31 for the implementation of any mandate created by this  
32 amendatory Act of the 93rd General Assembly.

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