



Rep. Elaine Nekritz

**Filed: 4/27/2012**

09700SB1808ham001

LRB097 00224 RLC 68937 a

1 AMENDMENT TO SENATE BILL 1808

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1808 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The State Police Act is amended by changing  
5 Section 14 as follows:

6 (20 ILCS 2610/14) (from Ch. 121, par. 307.14)

7 Sec. 14. Except as is otherwise provided in this Act, no  
8 Department of State Police officer shall be removed, demoted or  
9 suspended except for cause, upon written charges filed with the  
10 Board by the Director and a hearing before the Board thereon  
11 upon not less than 10 days' notice at a place to be designated  
12 by the chairman thereof. At such hearing, the accused shall be  
13 afforded full opportunity to be heard in his or her own defense  
14 and to produce proof in his or her defense. Anyone filing a  
15 complaint against a State Police Officer must have the  
16 complaint supported by a sworn affidavit. Any such complaint,

1 having been supported by a sworn affidavit, and having been  
2 found, in total or in part, to contain false information, shall  
3 be presented to the appropriate State's Attorney for a  
4 determination of prosecution. If a recorded conversation  
5 authorized under subsection (q) of Section 14-3 of the Criminal  
6 Code of 1961 is used by the complainant as part of the evidence  
7 of misconduct against the officer and is found to have been  
8 intentionally altered by or at the direction of the complainant  
9 to inaccurately reflect the incident at issue, it must be  
10 presented to the appropriate State's Attorney for a  
11 determination of prosecution.

12 Before any such officer may be interrogated or examined by  
13 or before the Board, or by a departmental agent or investigator  
14 specifically assigned to conduct an internal investigation,  
15 the results of which hearing, interrogation or examination may  
16 be the basis for filing charges seeking his or her suspension  
17 for more than 15 days or his or her removal or discharge, he or  
18 she shall be advised in writing as to what specific improper or  
19 illegal act he or she is alleged to have committed; he or she  
20 shall be advised in writing that his or her admissions made in  
21 the course of the hearing, interrogation or examination may be  
22 used as the basis for charges seeking his or her suspension,  
23 removal or discharge; and he or she shall be advised in writing  
24 that he or she has a right to counsel of his or her choosing,  
25 who may be present to advise him or her at any hearing,  
26 interrogation or examination. A complete record of any hearing,

1 interrogation or examination shall be made, and a complete  
2 transcript or electronic recording thereof shall be made  
3 available to such officer without charge and without delay.

4 The Board shall have the power to secure by its subpoena  
5 both the attendance and testimony of witnesses and the  
6 production of books and papers in support of the charges and  
7 for the defense. Each member of the Board or a designated  
8 hearing officer shall have the power to administer oaths or  
9 affirmations. If the charges against an accused are established  
10 by a preponderance of evidence, the Board shall make a finding  
11 of guilty and order either removal, demotion, suspension for a  
12 period of not more than 180 days, or such other disciplinary  
13 punishment as may be prescribed by the rules and regulations of  
14 the Board which, in the opinion of the members thereof, the  
15 offense merits. Thereupon the Director shall direct such  
16 removal or other punishment as ordered by the Board and if the  
17 accused refuses to abide by any such disciplinary order, the  
18 Director shall remove him or her forthwith.

19 If the accused is found not guilty or has served a period  
20 of suspension greater than prescribed by the Board, the Board  
21 shall order that the officer receive compensation for the  
22 period involved. The award of compensation shall include  
23 interest at the rate of 7% per annum.

24 The Board may include in its order appropriate sanctions  
25 based upon the Board's rules and regulations. If the Board  
26 finds that a party has made allegations or denials without

1 reasonable cause or has engaged in frivolous litigation for the  
2 purpose of delay or needless increase in the cost of  
3 litigation, it may order that party to pay the other party's  
4 reasonable expenses, including costs and reasonable attorney's  
5 fees. The State of Illinois and the Department shall be subject  
6 to these sanctions in the same manner as other parties.

7 In case of the neglect or refusal of any person to obey a  
8 subpoena issued by the Board, any circuit court, upon  
9 application of any member of the Board, may order such person  
10 to appear before the Board and give testimony or produce  
11 evidence, and any failure to obey such order is punishable by  
12 the court as a contempt thereof.

13 The provisions of the Administrative Review Law, and all  
14 amendments and modifications thereof, and the rules adopted  
15 pursuant thereto, shall apply to and govern all proceedings for  
16 the judicial review of any order of the Board rendered pursuant  
17 to the provisions of this Section.

18 Notwithstanding the provisions of this Section, a policy  
19 making officer, as defined in the Employee Rights Violation  
20 Act, of the Department of State Police shall be discharged from  
21 the Department of State Police as provided in the Employee  
22 Rights Violation Act, enacted by the 85th General Assembly.

23 (Source: P.A. 96-891, eff. 5-10-10.)

24 Section 10. The Uniform Peace Officers' Disciplinary Act is  
25 amended by changing Section 3.8 as follows:

1 (50 ILCS 725/3.8) (from Ch. 85, par. 2561)

2 Sec. 3.8. Admissions; counsel; verified complaint.

3 (a) No officer shall be interrogated without first being  
4 advised in writing that admissions made in the course of the  
5 interrogation may be used as evidence of misconduct or as the  
6 basis for charges seeking suspension, removal, or discharge;  
7 and without first being advised in writing that he or she has  
8 the right to counsel of his or her choosing who may be present  
9 to advise him or her at any stage of any interrogation.

10 (b) Anyone filing a complaint against a sworn peace officer  
11 must have the complaint supported by a sworn affidavit. Any  
12 complaint, having been supported by a sworn affidavit, and  
13 having been found, in total or in part, to contain knowingly  
14 false material information, shall be presented to the  
15 appropriate State's Attorney for a determination of  
16 prosecution. If a recorded conversation authorized under  
17 subsection (g) of Section 14-3 of the Criminal Code of 1961 is  
18 used by the complainant as part of the evidence of misconduct  
19 against the officer and is found to have been intentionally  
20 altered by or at the direction of the complainant to  
21 inaccurately reflect the incident at issue, it must be  
22 presented to the appropriate State's Attorney for a  
23 determination of prosecution.

24 (Source: P.A. 97-472, eff. 8-22-11.)

1           Section 15. The Criminal Code of 1961 is amended by  
2 changing Section 14-3 as follows:

3           (720 ILCS 5/14-3)

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

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

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

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

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

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

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

15           (g) With prior notification to the State's Attorney of the  
16 county in which it is to occur, recording or listening with the  
17 aid of any device to any conversation where a law enforcement  
18 officer, or any person acting at the direction of law  
19 enforcement, is a party to the conversation and has consented  
20 to it being intercepted or recorded under circumstances where  
21 the use of the device is necessary for the protection of the  
22 law enforcement officer or any person acting at the direction  
23 of law enforcement, in the course of an investigation of a  
24 forcible felony, a felony offense of involuntary servitude,  
25 involuntary sexual servitude of a minor, or trafficking in  
26 persons for forced labor or services under Section 10-9 of this

1 Code, an offense involving prostitution, solicitation of a  
2 sexual act, or pandering, a felony violation of the Illinois  
3 Controlled Substances Act, a felony violation of the Cannabis  
4 Control Act, a felony violation of the Methamphetamine Control  
5 and Community Protection Act, any "streetgang related" or  
6 "gang-related" felony as those terms are defined in the  
7 Illinois Streetgang Terrorism Omnibus Prevention Act, or any  
8 felony offense involving any weapon listed in paragraphs (1)  
9 through (11) of subsection (a) of Section 24-1 of this Code.  
10 Any recording or evidence derived as the result of this  
11 exemption shall be inadmissible in any proceeding, criminal,  
12 civil or administrative, except (i) where a party to the  
13 conversation suffers great bodily injury or is killed during  
14 such 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 shall  
17 issue regulations as are necessary concerning the use of  
18 devices, retention of tape recordings, and reports regarding  
19 their use;

20 (g-5) With approval of the State's Attorney of the county  
21 in which it is to occur, recording or listening with the aid of  
22 any device to any conversation where a law enforcement officer,  
23 or any person acting at the direction of law enforcement, is a  
24 party to the conversation and has consented to it being  
25 intercepted or recorded in the course of an investigation of  
26 any offense defined in Article 29D of this Code. In all such



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

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

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

21 (g-6) With approval of the State's Attorney of the county  
22 in which it is to occur, recording or listening with the aid of  
23 any device to any conversation where a law enforcement officer,  
24 or any person acting at the direction of law enforcement, is a  
25 party to the conversation and has consented to it being  
26 intercepted or recorded in the course of an investigation of

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

1 assault of a child, aggravated criminal sexual abuse in which  
2 the victim of the offense was at the time of the commission of  
3 the offense under 18 years of age, criminal sexual abuse by  
4 force or threat of force in which the victim of the offense was  
5 at the time of the commission of the offense under 18 years of  
6 age, or aggravated criminal sexual assault in which the victim  
7 of the offense was at the time of the commission of the offense  
8 under 18 years of age shall, upon motion of the State's  
9 Attorney or Attorney General prosecuting any case involving  
10 involuntary servitude, involuntary sexual servitude of a  
11 minor, trafficking in persons for forced labor or services,  
12 child pornography, aggravated child pornography, indecent  
13 solicitation of a child, child abduction, luring of a minor,  
14 sexual exploitation of a child, predatory criminal sexual  
15 assault of a child, aggravated criminal sexual abuse in which  
16 the victim of the offense was at the time of the commission of  
17 the offense under 18 years of age, criminal sexual abuse by  
18 force or threat of force in which the victim of the offense was  
19 at the time of the commission of the offense under 18 years of  
20 age, or aggravated criminal sexual assault in which the victim  
21 of the offense was at the time of the commission of the offense  
22 under 18 years of age, be reviewed in camera with notice to all  
23 parties present by the court presiding over the criminal case,  
24 and, if ruled by the court to be relevant and otherwise  
25 admissible, it shall be admissible at the trial of the criminal  
26 case. Absent such a ruling, any such recording or evidence

1 shall not be admissible at the trial of the criminal case;

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

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

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

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

1 such camera;

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

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

22 (j) The use of a telephone monitoring device by either (1)  
23 a corporation or other business entity engaged in marketing or  
24 opinion research or (2) a corporation or other business entity  
25 engaged in telephone solicitation, as defined in this  
26 subsection, to record or listen to oral telephone solicitation

1 conversations or marketing or opinion research conversations  
2 by an employee of the corporation or other business entity  
3 when:

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

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

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

23 When recording or listening authorized by this subsection  
24 (j) on telephone lines used for marketing or opinion research  
25 or telephone solicitation purposes results in recording or  
26 listening to a conversation that does not relate to marketing

1 or opinion research or telephone solicitation; the person  
2 recording or listening shall, immediately upon determining  
3 that the conversation does not relate to marketing or opinion  
4 research or telephone solicitation, terminate the recording or  
5 listening and destroy any such recording as soon as is  
6 practicable.

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

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

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

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

22 (ii) receiving orders for the sale of goods or  
23 services;

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

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

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

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

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

22          (m) An electronic recording, including but not limited to,  
23          a motion picture, videotape, digital, or other visual or audio  
24          recording, made of the interior of a school bus while the  
25          school bus is being used in the transportation of students to  
26          and from school and school-sponsored activities, when the



1 school board has adopted a policy authorizing such recording,  
2 notice of such recording policy is included in student  
3 handbooks and other documents including the policies of the  
4 school, notice of the policy regarding recording is provided to  
5 parents of students, and notice of such recording is clearly  
6 posted on the door of and inside the school bus.

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

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

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

24 (p) Recording or listening with the aid of any device to  
25 incoming telephone calls of phone lines publicly listed or  
26 advertised as the "CPS Violence Prevention Hotline", but only

1 where the notice of recording is given at the beginning of each  
2 call as required by Section 34-21.8 of the School Code. The  
3 recordings may be retained only by the Chicago Police  
4 Department or other law enforcement authorities, and shall not  
5 be otherwise retained or disseminated; and -

6 (q) A person who is not a law enforcement officer nor  
7 acting at the direction of a law enforcement officer may record  
8 the conversation of a law enforcement officer who is performing  
9 a public duty in a public place and any other person who is  
10 having a conversation with that law enforcement officer if the  
11 conversation is at a volume audible to the unassisted ear of  
12 the person who is making the recording. For purposes of this  
13 subsection (q), "public place" means any place to which the  
14 public has access and includes, but is not limited to, streets,  
15 sidewalks, parks, and highways (including inside motor  
16 vehicles), and the common areas of public and private  
17 facilities and buildings.

18 (Source: P.A. 96-425, eff. 8-13-09; 96-547, eff. 1-1-10;  
19 96-643, eff. 1-1-10; 96-670, eff. 8-25-09; 96-1000, eff.  
20 7-2-10; 96-1425, eff. 1-1-11; 96-1464, eff. 8-20-10; 97-333,  
21 eff. 8-12-11.)

22 Section 99. Effective date. This Act takes effect upon  
23 becoming law."