

1 AN ACT in relation to interrogations.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Department of State Police Law of the  
5 Civil Administrative Code of Illinois is amended by adding  
6 Section 2605-410 as follows:

7 (20 ILCS 2605/2605-410 new)

8 Sec. 2605-410. Grants for the purchase of videotape  
9 equipment. The Department of State Police shall make grants  
10 available to local law enforcement agencies, subject to a  
11 separate appropriation, for the purpose of purchasing  
12 videotape equipment.

13 Section 10. The Juvenile Court Act of 1987 is amended by  
14 adding Section 5-401.5 as follows:

15 (705 ILCS 405/5-401.5 new)

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

17 (a) In this Section, a "written statement of a minor"  
18 means a statement signed by the minor or a statement made by  
19 the minor in his or her own handwriting or, if the minor is  
20 unable to write, a statement bearing his or her mark, when  
21 the mark has been witnessed by a person other than a peace  
22 officer.

23 (b) No oral, written, or sign language statement of a  
24 minor who, at the time of the commission of the offense, was  
25 under the age of 17 years made as a result of a custodial  
26 interrogation shall be admissible as evidence against the  
27 minor in any proceeding under this Act in which the minor is  
28 alleged to be delinquent for an act that if committed by an  
29 adult would be a non-probationable felony unless:

1           (1) the minor is represented by an attorney who is  
2 present at all times during the custodial interrogation;

3           (2) an electronic video and audio recording is made  
4 of the custodial interrogation;

5           (3) prior to the custodial interrogation but during  
6 the recording, the minor is given the following warnings:

7               i. that the minor has the right to remain  
8 silent and not make any statement at all, and that  
9 any statement he or she makes may be used against  
10 him or her at his or her trial;

11               ii. that any statement he or she makes may be  
12 used as evidence against him or her in court;

13               iii. that he or she has the right to have an  
14 attorney present to advise him or her prior to and  
15 during any questioning;

16               iv. that if he or she is unable to employ an  
17 attorney, he or she has the right to have an  
18 attorney appointed to advise him or her prior to and  
19 during any questioning; and

20               v. that he or she has the right to terminate  
21 the interrogation at any time.

22           (4) prior to the statement but during the recording,  
23 the minor knowingly, intelligently, and voluntarily  
24 waives any rights described in paragraph (3);

25           (5) the recording device was capable of making an  
26 accurate recording, the operator was competent, and the  
27 recording is accurate and has not been altered;

28               (6) all voices on the recording are identified;

29           (7) not later than the 20th day before the date of  
30 the proceeding, the attorney representing the minor is  
31 provided with a true, complete, and accurate copy of all  
32 recordings of the minor made under this Section.

33           (c) In addition to the requirements of subsection (b) of  
34 this Section, no written statement made by a minor as a

1 result of a custodial interrogation is admissible as evidence  
2 against him or her in any proceeding under this Act unless it  
3 is shown on the face of the statement that:

4 (1) the minor, prior to making the statement,  
5 received from the person to whom the statement is made a  
6 warning that:

7 (A) he or she has the right to remain silent  
8 and not make any statement at all and that any  
9 statement he or she makes may be used against him or  
10 her in any proceeding under this Act;

11 (B) any statement he or she makes may be used  
12 as evidence against him or her in court;

13 (C) he or she has the right to have an  
14 attorney present to advise him or her prior to and  
15 during any questioning;

16 (D) if he or she is unable to employ an  
17 attorney, he or she has the right to have an  
18 attorney appointed to advise the minor prior to and  
19 during any questioning; and

20 (E) he or she has the right to terminate the  
21 interrogation at any time.

22 (2) the minor, prior to and during the making of  
23 the statement, knowingly, intelligently, and voluntarily  
24 waived the rights set out in the warning prescribed by  
25 item (1) of this subsection (c).

26 (d) Every electronic video and audio recording of any  
27 statement made by a minor during a custodial interrogation  
28 must be preserved until such time as the minor's adjudication  
29 for any offense relating to the statement is final and all  
30 direct and habeas corpus appeals are exhausted, or the  
31 prosecution of such offenses is barred by law.

32 (e) If the minor is a deaf person, the minor's statements  
33 under subsection (b) of this Section are not admissible  
34 against the minor unless the warnings in subsection (b) are

1 interpreted to the deaf person by an interpreter who is  
2 qualified and sworn as provided by Illinois law.

3 (f) If the minor can prove, by a preponderance of the  
4 evidence, that he or she was subjected to a custodial  
5 interrogation prior to the custodial interrogation that was  
6 the subject of the electronic video and audio recording, and  
7 if that prior custodial interrogation was not recorded as  
8 required by this Section, then any statements made by the  
9 minor during or following that non-recorded custodial  
10 interrogation, even if otherwise in compliance with this  
11 Section, are inadmissible in any criminal proceeding against  
12 the minor except for the purposes of impeachment.

13 (g) In all cases where a question is raised as to the  
14 voluntariness of a statement of a minor, the court must make  
15 an independent finding in the absence of the jury as to  
16 whether the statement was made under voluntary conditions.  
17 If the statement has been found to have been voluntarily made  
18 and held admissible as a matter of law and fact by the court  
19 in a hearing in the absence of the jury, the court must enter  
20 an order stating its conclusion as to whether or not the  
21 statement was voluntarily made, along with the specific  
22 finding of facts upon which the conclusion was based, which  
23 order shall be filed among the papers of the cause. The  
24 order may not be exhibited to the jury nor the finding of the  
25 order made known to the jury in any manner. Upon the finding  
26 by the judge as a matter of law and fact that the statement  
27 was voluntarily made, evidence pertaining to the matter may  
28 be submitted to the jury and it shall be instructed that  
29 unless a jury believes beyond a reasonable doubt that the  
30 statement was voluntarily made, the jury may not consider the  
31 statement for any purpose nor any evidence obtained as a  
32 result of the statement. In any case in which a motion to  
33 suppress the statement has been filed and evidence has been  
34 submitted to the court on this issue, the court within its

1 discretion may reconsider the evidence in its finding that  
2 the statement was voluntarily made and the same evidence  
3 submitted to the court at the hearing on the motion to  
4 suppress shall be made a part of the record the same as if it  
5 were being presented at the time of trial. However, the  
6 State or the minor shall be entitled to present any new  
7 evidence on the issue of the voluntariness of the statement  
8 prior to the court's final ruling and order stating its  
9 findings.

10 (h) Nothing in this Section precludes the admission (i)  
11 of a statement made by the minor in open court in any  
12 proceeding under this Act, before a grand jury, or at a  
13 preliminary hearing, (ii) of a statement that is the res  
14 gestae of the arrest or of the offense, (iii) of a statement  
15 that does not stem from custodial interrogation, (iv) of a  
16 statement made during a custodial interrogation that was not  
17 electronically recorded as required by this Section, provided  
18 that a court finds by clear and convincing evidence that  
19 electronic recording of the minor's statements was not  
20 feasible, (v) of a voluntary statement, whether or not the  
21 result of custodial interrogation, that has a bearing on the  
22 credibility of the accused as a witness, or (vi) of any other  
23 statement that may be admissible under law. The State shall  
24 bear the burden of proving, by a preponderance of the  
25 evidence, that one of the exceptions described in this  
26 subsection (h) is applicable, except that the State shall  
27 bear the burden of proving by clear and convincing evidence  
28 that the exception in subsection (iv) is applicable. Nothing  
29 in this Section precludes the admission of a statement,  
30 otherwise inadmissible under this Section, that is used only  
31 for impeachment and not as substantive evidence.

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

1 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

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

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

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

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

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

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

1 of the individual or business operating any such recording or  
2 listening device to comply with the requirements of this  
3 subsection shall eliminate any civil or criminal immunity  
4 conferred upon that individual or business by the operation  
5 of this Section;

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

30 (h) Recordings made simultaneously with a video  
31 recording of an oral conversation between a peace officer,  
32 who has identified his or her office, and a person stopped  
33 for an investigation of an offense under the Illinois Vehicle  
34 Code;

1 (i) Recording of a conversation made by or at the  
2 request of a person, not a law enforcement officer or agent  
3 of a law enforcement officer, who is a party to the  
4 conversation, under reasonable suspicion that another party  
5 to the conversation is committing, is about to commit, or has  
6 committed a criminal offense against the person or a member  
7 of his or her immediate household, and there is reason to  
8 believe that evidence of the criminal offense may be obtained  
9 by the recording; and

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

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

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

29 No communication or conversation or any part, portion, or  
30 aspect of the communication or conversation made, acquired,  
31 or obtained, directly or indirectly, under this exemption  
32 (j), may be, directly or indirectly, furnished to any law  
33 enforcement officer, agency, or official for any purpose or  
34 used in any inquiry or investigation, or used, directly or

1 indirectly, in any administrative, judicial, or other  
2 proceeding, or divulged to any third party.

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

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

19 Business entities that use a telephone monitoring or  
20 telephone recording system pursuant to this exemption (j)  
21 shall provide their employees or agents with access to  
22 personal-only telephone lines which may be pay telephones,  
23 that are not subject to telephone monitoring or telephone  
24 recording.

25 For the purposes of this subsection (j), "telephone  
26 solicitation" means a communication through the use of a  
27 telephone by live operators:

- 28 (i) soliciting the sale of goods or services;
- 29 (ii) receiving orders for the sale of goods or  
30 services;
- 31 (iii) assisting in the use of goods or services; or
- 32 (iv) engaging in the solicitation, administration,  
33 or collection of bank or retail credit accounts.

34 For the purposes of this subsection (j), "marketing or

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

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

14 (Source: P.A. 91-357, eff. 7-29-99.)

15 Section 20. The Code of Criminal Procedure of 1963 is  
16 amended by adding Section 103-2.1 as follows:

17 (725 ILCS 5/103-2.1 new)

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

19 (a) In this Section, a "written statement of an accused"  
20 means a statement signed by the accused or a statement made  
21 by the accused in his or her own handwriting or, if the  
22 accused is unable to write, a statement bearing his or her  
23 mark, when the mark has been witnessed by a person other than  
24 a peace officer.

25 (b) No oral, written, or sign language statement of an  
26 accused made as a result of a custodial interrogation shall  
27 be admissible as evidence against the accused in any criminal  
28 proceeding brought under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3,  
29 9-3.2, 9-3.3, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the  
30 Criminal Code of 1961, unless:

31 (1) an electronic video and audio recording is made  
32 of the custodial interrogation;

1           (2) prior to the custodial interrogation but during  
2 the recording the accused is given the following  
3 warnings:

4           (i) that the accused has the right to remain  
5 silent and not make any statement at all, and that  
6 any statement the accused makes may be used against  
7 the accused at his or her trial;

8           (ii) that any statement the accused makes may  
9 be used as evidence against the accused in court;

10           (iii) that the accused has the right to have an  
11 attorney present to advise him or her prior to and  
12 during any questioning;

13           (iv) that if the accused is unable to employ an  
14 attorney, he or she has the right to have an  
15 attorney appointed to advise him or her prior to and  
16 during any questioning; and

17           (v) that he or she has the right to terminate  
18 the interrogation at any time.

19           (3) prior to the statement but during the recording,  
20 the accused knowingly, intelligently, and voluntarily  
21 waives the rights described in paragraph (2);

22           (4) the recording device was capable of making an  
23 accurate recording, the operator was competent, and the  
24 recording is accurate and has not been altered;

25           (5) all voices on the recording are identified;

26           (6) not later than the 20th day before the date of  
27 the proceeding, the attorney representing the defendant  
28 is provided with a true, complete, and accurate copy of  
29 all recordings of the defendant made under this Section.

30           (c) In addition to the requirements of subsection (b) of  
31 this Section, no written statement made by an accused as a  
32 result of a custodial interrogation is admissible as evidence  
33 against his or her in any criminal proceeding unless it is  
34 shown on the face of the statement that:

1           (1) the accused, prior to making the statement,  
2           received from the person to whom the statement is made a  
3           warning that:

4                   (A) he or she has the right to remain silent  
5                   and not make any statement at all and that any  
6                   statement he or she makes may be used against him or  
7                   her at his or her trial;

8                   (B) any statement he or she makes may be used  
9                   as evidence against him or her in court;

10                   (C) He or she has the right to have an  
11                   attorney present to advise him or her prior to and  
12                   during any questioning;

13                   (D) if he or she is unable to employ an  
14                   attorney, he or she has the right to have an  
15                   attorney appointed to advise him or her prior to and  
16                   during any questioning; and

17                   (E) he or she has the right to terminate the  
18                   interrogation at any time.

19           (2) the accused, prior to and during the making of  
20           the statement, knowingly, intelligently, and voluntarily  
21           waived the rights set out in the warning prescribed by  
22           item (1) of this subsection (c).

23           (d) Every electronic video and audio recording of any  
24           statement made by an accused during a custodial interrogation  
25           must be preserved until such time as the defendant's  
26           conviction for any offense relating to the statement is final  
27           and all direct and habeas corpus appeals are exhausted, or  
28           the prosecution of such offenses is barred by law.

29           (e) If the accused is a deaf person, the accused's  
30           statements under subsection (b) of this Section are not  
31           admissible against the accused unless the warnings in  
32           subsection (b) are interpreted to the deaf person by an  
33           interpreter who is qualified and sworn as provided by  
34           Illinois law.

1       (f) If the defendant can prove, by a preponderance of the  
2 evidence, that he or she was subjected to a custodial  
3 interrogation prior to the custodial interrogation that was  
4 the subject of the electronic video and audio recording, and  
5 if that prior custodial interrogation was not recorded as  
6 required by this Section, then any statements made by the  
7 defendant during or following that non-recorded custodial  
8 interrogation, even if otherwise in compliance with this  
9 Section, are inadmissible in any criminal proceeding against  
10 the defendant except for the purposes of impeachment.

11       (g) In all cases where a question is raised as to the  
12 voluntariness of a statement of an accused, the court must  
13 make an independent finding in the absence of the jury as to  
14 whether the statement was made under voluntary conditions.  
15 If the statement has been found to have been voluntarily made  
16 and held admissible as a matter of law and fact by the court  
17 in a hearing in the absence of the jury, the court must enter  
18 an order stating its conclusion as to whether or not the  
19 statement was voluntarily made, along with the specific  
20 finding of facts upon which the conclusion was based, which  
21 order shall be filed among the papers of the cause. The  
22 order shall not be exhibited to the jury nor the finding of  
23 the order made known to the jury in any manner. Upon the  
24 finding by the judge as a matter of law and fact that the  
25 statement was voluntarily made, evidence pertaining to the  
26 matter may be submitted to the jury and it shall be  
27 instructed that unless a jury believes beyond a reasonable  
28 doubt that the statement was voluntarily made, the jury may  
29 not consider the statement for any purpose nor any evidence  
30 obtained as a result of the statement. In any case where a  
31 motion to suppress the statement has been filed and evidence  
32 has been submitted to the court on this issue, the court  
33 within its discretion may reconsider the evidence in its  
34 finding that the statement was voluntarily made and the same

1 evidence submitted to the court at the hearing on the motion  
2 to suppress shall be made a part of the record the same as if  
3 it were being presented at the time of trial. However, the  
4 State or the defendant shall be entitled to present any new  
5 evidence on the issue of the voluntariness of the statement  
6 prior to the court's final ruling and order stating its  
7 findings.

8 (h) Nothing in this Section precludes the admission (i)  
9 of a statement made by the accused in open court at his or  
10 her trial, before a grand jury, or at a preliminary hearing,  
11 (ii) of a statement that is the res gestae of the arrest or  
12 of the offense, (iii) of a statement that does not stem from  
13 custodial interrogation, (iv) of a statement made during a  
14 custodial interrogation that was not electronically recorded  
15 as required by this Section, provided that a court finds by  
16 clear and convincing evidence that electronic recording of  
17 the accused's statements was not feasible, (v) of a voluntary  
18 statement, whether or not the result of custodial  
19 interrogation, that has a bearing on the credibility of the  
20 accused as a witness, or (vi) of any other statement that may  
21 be admissible under law. The State shall bear the burden of  
22 proving, by a preponderance of the evidence, that one of the  
23 exceptions described in this subsection (h) is applicable,  
24 except that the State shall bear the burden of proving by  
25 clear and convincing evidence that the exception in clause  
26 (iv) is applicable. Nothing in this Section precludes the  
27 admission of a statement, otherwise inadmissible under this  
28 Section, that is used only for impeachment and not as  
29 substantive evidence.