

1 AN ACT concerning recording of statements in criminal
2 investigations.

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

5 Section 2. The Illinois Criminal Justice Information Act
6 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 5. 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
20 for that purpose, the Board shall initiate, administer, and
21 conduct training programs for permanent police officers,
22 part-time police officers, and recruits on the methods and
23 technical aspects of conducting electronic recordings of
24 interrogations.

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

27 (705 ILCS 405/5-401.5 new)

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

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

8 In this Section, "electronic recording" includes motion
9 picture, audiotape, or videotape.

10 In this Section, "place of detention" means a building
11 under the control of a law enforcement agency at which
12 persons are or may be held in detention in connection with
13 criminal charges against those persons or allegations that
14 those persons are delinquent minors.

15 (b) An oral or sign language statement of a minor who, at
16 the time of the commission of the offense was under the age
17 of 17 years, made as a result of a custodial interrogation
18 conducted at a police station or other place of detention on
19 or after the effective date of this amendatory Act of the
20 93rd General Assembly shall be presumed to be inadmissible as
21 evidence against the minor in any criminal proceeding or
22 juvenile court proceeding, for an act that if committed by an
23 adult would be brought under Section 9-1, 9-1.2, 9-2, 9-2.1,
24 9-3, 9-3.2, 9-3.3, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of
25 the Criminal Code of 1961 unless:

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

28 (2) the recording is accurate and has not been
29 altered; and

30 (3) not later than the 20th day before the date of
31 any proceeding in criminal or juvenile court at which the
32 statement is to be admitted as evidence against the
33 minor, the attorney representing the minor is permitted
34 to review a true, complete, and accurate copy of all

1 recordings of the minor made under this Section.

2 (c) Every electronic recording of any statement made by a
3 minor during a custodial interrogation at a police station or
4 other place of detention must be preserved until such time as
5 the minor's adjudication for any offense relating to the
6 statement is final and all direct and habeas corpus appeals
7 are exhausted, or the prosecution of such offenses is barred
8 by law.

9 (d) If the court finds, by a preponderance of the
10 evidence, that the minor was subjected to a custodial
11 interrogation at a police station or other place of detention
12 prior to the custodial interrogation at a police station or
13 other place of detention and after the effective date of this
14 amendatory Act of the 93rd General Assembly that was the
15 subject of the electronic recording, and if that prior
16 custodial interrogation at a police station or other place of
17 detention relating to the same offense was not recorded as
18 required by this Section, then any statements made by the
19 minor during or following that non-recorded custodial
20 interrogation at a police station or other place of
21 detention, even if otherwise in compliance with this Section,
22 are presumed to be inadmissible in any criminal proceeding or
23 juvenile court proceeding against the minor except for the
24 purposes of impeachment.

25 (e) Nothing in this Section precludes the admission (i)
26 of a statement made by the minor in open court in any
27 criminal proceeding or juvenile court proceeding, before a
28 grand jury, or at a preliminary hearing, (ii) of a statement
29 made during a custodial interrogation that was not recorded
30 as required by this Section because electronic recording was
31 not feasible, (iii) of a voluntary statement, whether or not
32 the result of a custodial interrogation, that has a bearing
33 on the credibility of the accused as a witness, (iv) of a
34 statement made under exigent circumstances, (v) of a

1 spontaneous statement that is not made in response to a
2 question, (vi) of a statement made after questioning that is
3 routinely asked during the processing of the arrest of the
4 suspect, (vii) of a statement made during a custodial
5 interrogation by a suspect who agrees, prior to making the
6 statement, to respond to the interrogator's questions only if
7 an electronic recording is not made of the statement,
8 provided that an electronic recording is made of the
9 statement of agreeing to respond to the interrogator's
10 question, only if a recording is not made of the statement,
11 (viii) of a statement made during a custodial interrogation
12 that is conducted out-of-state, (ix) of a statement made by a
13 suspect who is being interrogated simultaneously with other
14 suspects concerning the same offense, but only to the extent
15 that no electric recording equipment is available because it
16 is being utilized for the interrogations of the other
17 suspects for the same offense, (x) of a statement given at a
18 time when the interrogators are unaware that a death or an
19 act of sexual assault or sexual conduct has in fact occurred,
20 or (xi) of any other statement that may be admissible under
21 law. The State shall bear the burden of proving, by a
22 preponderance of the evidence, that one of the exceptions
23 described in this subsection (e) is applicable. Nothing in
24 this Section precludes the admission of a statement,
25 otherwise inadmissible under this Section, that is used only
26 for impeachment and not as substantive evidence.

27 (f) The presumption of inadmissibility of a statement
28 made by a suspect at a custodial interrogation may be
29 overcome by a preponderance of the evidence that the
30 statement was voluntarily given and is reliable, based on the
31 totality of the circumstances.

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~~7-a-felony-violation-of~~
16 ~~the-Illinois-Controlled-Substances-Act7-a-felony-violation-of~~
17 ~~the-Cannabis-Control-Act7~~ 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 (g-5) With approval of the State's Attorney of the
31 county in which it is to occur, recording or listening with
32 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 in the course
2 of an investigation of any offense defined in Article 29D of
3 this Code. In all such cases, an application for an order
4 approving the previous or continuing use of an eavesdropping
5 device must be made within 48 hours of the commencement of
6 such use. In the absence of such an order, or upon its
7 denial, any continuing use shall immediately terminate. The
8 Director of State Police shall issue rules as are necessary
9 concerning the use of devices, retention of tape recordings,
10 and reports regarding their use.

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

19 This subsection (g-5) is inoperative on and after January
20 1, 2005. No conversations recorded or monitored pursuant to
21 this subsection (g-5) shall be inadmissible in a court of law
22 by virtue of the repeal of this subsection (g-5) on January
23 1, 2005_i;

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

29 (i) Recording of a conversation made by or at the
30 request of a person, not a law enforcement officer or agent
31 of a law enforcement officer, who is a party to the
32 conversation, under reasonable suspicion that another party
33 to the conversation is committing, is about to commit, or has
34 committed a criminal offense against the person or a member

1 of his or her immediate household, and there is reason to
2 believe that evidence of the criminal offense may be obtained
3 by the recording; and

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

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

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

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

31 When recording or listening authorized by this subsection
32 (j) on telephone lines used for marketing or opinion research
33 or telephone solicitation purposes results in recording or
34 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
5 or 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)
9 shall provide current and prospective employees with notice
10 that the monitoring or recordings may occur during the course
11 of their employment. The notice shall include prominent
12 signage notification within the workplace.

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

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

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

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

1 political issues, or both;-

2 (k) Electronic recordings, including but not limited to,
3 a motion picture, videotape, or other visual and audio
4 recording, made of a custodial interrogation of an individual
5 at a police station or other place of detention by a law
6 enforcement officer under Section 5-401.5 of the Juvenile
7 Court Act of 1987 or Section 103-2.1 of the Code of Criminal
8 Procedure of 1963; and

9 (l) With prior notification to and verbal approval of
10 the State's Attorney or his or her designee of the county in
11 which the conversation is anticipated to occur, recording or
12 listening with the aid of an eavesdropping device to a
13 conversation in which a law enforcement officer, or any
14 person acting at the direction of a law enforcement officer,
15 is a party to an undercover conversation and has consented to
16 the conversation being intercepted or recorded in the course
17 of an investigation of a felony violation of the Illinois
18 Controlled Substances Act or a felony violation of the
19 Cannabis Control Act. The Director of State Police shall
20 adopt any necessary rules concerning the use of devices,
21 retention of recording media, and reports regarding their
22 use.

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

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

26 (725 ILCS 5/103-2.1 new)

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

28 (a) In this Section, "custodial interrogation" means any
29 interrogation during which (i) a reasonable person in the
30 subject's position, innocent of any crime, would consider
31 himself or herself to be in custody and (ii) during which a
32 question is asked that is reasonably likely to elicit an

1 incriminating response.

2 In this Section, "place of detention" means a building
3 under the control of a law enforcement agency at which
4 persons are or may be held in detention in connection with
5 criminal charges against those persons.

6 In this Section, "electronic recording" includes motion
7 picture, audiotape, or videotape.

8 (b) An oral or sign language statement of an accused made
9 as a result of a custodial interrogation at a police station
10 or other place of detention shall be presumed to be
11 inadmissible as evidence against the accused in any criminal
12 proceeding brought under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3,
13 9-3.2, 9-3.3, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the
14 Criminal Code of 1961 unless:

15 (1) an electronic recording is made of the custodial
16 interrogation;

17 (2) the recording is accurate and has not been
18 altered; and

19 (3) not later than the 20th day before the date of
20 any criminal proceeding at which the statement is to be
21 offered as evidence against the defendant, the attorney
22 representing the defendant is permitted to review a true,
23 complete, and accurate copy of all recordings of the
24 defendant made under this Section.

25 (c) Every electronic recording of any statement made by
26 an accused during a custodial interrogation at a police
27 station or other place of detention must be preserved until
28 such time as the defendant's conviction for any offense
29 relating to the statement is final and all direct and habeas
30 corpus appeals are exhausted, or the prosecution of such
31 offenses is barred by law.

32 (d) If the court finds, by a preponderance of the
33 evidence, that the defendant was subjected to a custodial
34 interrogation at a police station or other place of detention

1 prior to the custodial interrogation at a police station or
2 other place of detention and after the effective date of this
3 amendatory Act of the 93rd General Assembly that was the
4 subject of the electronic recording, and if that prior
5 custodial interrogation at a police station or other place of
6 detention relating to the same offense was not recorded as
7 required by this Section, then any statements made by the
8 defendant during or following that non-recorded custodial
9 interrogation at a police station or other place of
10 detention, even if otherwise in compliance with this Section,
11 are presumed to be inadmissible in any criminal proceeding
12 against the defendant except for the purposes of impeachment.

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

1 simultaneously with other suspects concerning the same
2 offense, but only to the extent that no electronic recording
3 equipment (video or audio) is available because it is being
4 utilized for the interrogations of the other suspects for the
5 same offense, (x) of a statement given at a time when the
6 interrogators are unaware that a death or an act of sexual
7 assault or sexual conduct has in fact occurred, or (xi) of
8 any other statement that may be admissible under law. The
9 State shall bear the burden of proving, by a preponderance of
10 the evidence, that one of the exceptions described in this
11 subsection (e) is applicable. Nothing in this Section
12 precludes the admission of a statement, otherwise
13 inadmissible under this Section, that is used only for
14 impeachment and not as substantive evidence.

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

20 Section 95. The State Mandates Act is amended by adding
21 Section 8.27 as follows:

22 (30 ILCS 805/8.27 new)
23 Sec. 8.27. Exempt mandate. Notwithstanding Sections 6
24 and 8 of this Act, no reimbursement by the State is required
25 for the implementation of any mandate created by this
26 amendatory Act of the 93rd General Assembly.

27 Section 99. Effective date. Sections 2, 5, 15, and 95
28 of this Act and this Section 99 take effect upon becoming
29 law. Sections 10 and 20 of this Act take effect 2 years
30 after becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 20 ILCS 3930/7.5 new

4 50 ILCS 705/10.3 new

5 705 ILCS 405/5-401.5 new

6 720 ILCS 5/14-3 from Ch. 38, par. 14-3

7 725 ILCS 5/103-2.1 new

8 30 ILCS 805/8.27 new