

1 AMENDMENT TO HOUSE BILL 2740

2 AMENDMENT NO. _____. Amend House Bill 2740 by replacing
3 everything after the enacting clause with the following:

4 "Section 2. The Illinois Criminal Justice Information
5 Act is amended by adding Section 7.5 as follows:

6 (20 ILCS 3930/7.5 new)

7 Sec. 7.5. Grants for video and audio recording
8 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 video
12 and audio 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 10.2 as follows:

17 (50 ILCS 705/10.2 new)

18 Sec. 10.2. Training of police officers to conduct
19 videotape interrogations. From appropriations made to it for
20 that purpose, the Board shall initiate, administer, and

1 conduct training programs for permanent police officers,
2 part-time police officers, and recruits on the methods and
3 technical aspects of conducting video and audio recordings of
4 interrogations.

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

7 (705 ILCS 405/5-401.5 new)

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

9 (a) In this Section, a "written statement of a minor"
10 means a statement signed by the minor or a statement made by
11 the minor in his or her own handwriting or, if the minor is
12 unable to write, a statement bearing his or her mark, when
13 the mark has been witnessed by a person other than a peace
14 officer.

15 In this Section, "custodial interrogation" means any
16 interrogation during which the person being interrogated is
17 not free to leave and a question is asked that is designed to
18 elicit an incriminating response.

19 In this Section, "place of detention" means a facility
20 under the control of a law enforcement agency.

21 (b) An oral, written, or sign language statement of a
22 minor who, at the time of the commission of the offense was
23 under the age of 17 years, made as a result of a custodial
24 interrogation conducted at a police station or other place of
25 detention on or after the effective date of this Section
26 shall be presumed to be inadmissible as evidence against the
27 minor in any criminal proceeding, whether in adult or
28 juvenile court, for an act that if committed by an adult
29 would be brought under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3,
30 9-3.2, 9-3.3, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the
31 Criminal Code of 1961 unless:

32 (1) an electronic video and audio recording is made

1 of the custodial interrogation;

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

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

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

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

13 (D) that 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;

17 (3) prior to the statement but during the recording,
18 the minor waives any rights described in paragraph (2);

19 (4) the recording is accurate and has not been
20 altered;

21 (5) all voices on the recording are identifiable;
22 and

23 (6) not later than the 20th day before the date of
24 any criminal proceeding at which the statement is to be
25 admitted as evidence against the minor, the attorney
26 representing the minor is permitted to review a true,
27 complete, and accurate copy of all recordings of the
28 minor made under this Section.

29 (c) A written statement made by a juvenile under 17
30 years of age as a result of a custodial interrogation at a
31 police station or other place of detention is presumed to be
32 inadmissible as evidence against him or her in any criminal
33 proceeding, in juvenile or adult court, for any offense that
34 if committed by an adult, would be brought under any of the

1 criminal provisions listed in subsection (b) unless it is
2 shown on the face of the statement that:

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

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

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

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

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

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

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

29 (e) If the minor is a deaf person, the minor's statements
30 under subsection (b) of this Section are presumed to be
31 inadmissible against the minor unless the warnings in
32 subsection (b) are interpreted to the deaf person by an
33 interpreter who is qualified and certified by the Registry of
34 Interpreters for the Deaf.

1 (f) If the minor can prove, by a preponderance of the
2 evidence, that he or she was subjected to a custodial
3 interrogation at a police station or other place of detention
4 prior to the custodial interrogation at a police station or
5 other place of detention and after the effective date of this
6 Section that was the subject of the electronic video and
7 audio recording, and if that prior custodial interrogation at
8 a police station or other place of detention relating to the
9 same offense was not recorded as required by this Section,
10 then any statements made by the minor during or following
11 that non-recorded custodial interrogation at a police station
12 or other place of detention, even if otherwise in compliance
13 with this Section, are presumed to be inadmissible in any
14 criminal proceeding against the minor except for the purposes
15 of impeachment.

16 (g) Nothing in this Section precludes the admission (i)
17 of a statement made by the minor in open court in any
18 criminal proceeding, before a grand jury, or at a preliminary
19 hearing, (ii) of a statement that is res gestae of the arrest
20 or of the offense, (iii) of a statement made during a
21 custodial interrogation that was not recorded as required by
22 this Section because video or audio recording, or both, was
23 not feasible, (iv) of a voluntary statement, whether or not
24 the result of a custodial interrogation, that has a bearing
25 on the credibility of the accused as a witness, (v) of a
26 statement made under exigent circumstances, (vi) of a
27 spontaneous statement that is not made in response to a
28 question, (vii) of a statement made after questioning that is
29 routinely asked during the processing of the arrest of the
30 suspect, (viii) of a statement made during a custodial
31 interrogation by a suspect who agrees, prior to making the
32 statement, to respond to the interrogator's questions only if
33 either a video or audio recording, or both, is not made of
34 the statement, provided that an electronic video and audio

1 recording is made of the statement of agreeing to respond to
2 the interrogator's question, only if a recording is not made
3 of the statement, (ix) of a statement made during a custodial
4 interrogation that is conducted out-of-state, (x) of a
5 statement made by a suspect who is being interrogated
6 simultaneously with other suspects concerning the same
7 offense, but only to the extent that no electric recording
8 equipment (video or audio) is available because it is being
9 utilized for the interrogations of the other suspects for the
10 same offense, or (xi) of any other statement that may be
11 admissible under law. The State shall bear the burden of
12 proving, by a preponderance of the evidence, that one of the
13 exceptions described in this subsection (g) is applicable.
14 Nothing in this Section precludes the admission of a
15 statement, otherwise inadmissible under this Section, that is
16 used only for impeachment and not as substantive evidence.

17 (h) The presumption of inadmissibility of a statement
18 made by a suspect at a custodial interrogation may be
19 overcome by clear and convincing evidence that the statement
20 was voluntarily given and is reliable.

21 (i) In addition to the requirements of subsection (b),
22 no oral, written, or sign language statement of a minor who
23 at the time of the commission of the offense was under 13
24 years of age made as a result of a custodial interrogation
25 conducted at a police station or other place of detention on
26 or after the effective date of this Section shall be
27 admissible as evidence against the minor in any proceeding
28 for an act that if committed by an adult would be brought
29 under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, 9-3.3,
30 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code
31 of 1961 unless he or she is represented by counsel during the
32 entire custodial interrogation.

33 Section 15. The Criminal Code of 1961 is amended by

1 changing Section 14-3 as follows:

2 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

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

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

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

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

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

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

29 (f) Recording or listening with the aid of any device to
30 incoming telephone calls of phone lines publicly listed or
31 advertised as consumer "hotlines" by manufacturers or
32 retailers of food and drug products. Such recordings must be
33 destroyed, erased or turned over to local law enforcement

1 authorities within 24 hours from the time of such recording
2 and shall not be otherwise disseminated. Failure on the part
3 of the individual or business operating any such recording or
4 listening device to comply with the requirements of this
5 subsection shall eliminate any civil or criminal immunity
6 conferred upon that individual or business by the operation
7 of this Section;

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

32 (h) Recordings made simultaneously with a video
33 recording of an oral conversation between a peace officer,
34 who has identified his or her office, and a person stopped

1 for an investigation of an offense under the Illinois Vehicle
2 Code;

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

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

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

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

31 No communication or conversation or any part, portion, or
32 aspect of the communication or conversation made, acquired,
33 or obtained, directly or indirectly, under this exemption
34 (j), may be, directly or indirectly, furnished to any law

1 enforcement officer, agency, or official for any purpose or
2 used in any inquiry or investigation, or used, directly or
3 indirectly, in any administrative, judicial, or other
4 proceeding, or divulged to any third party.

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

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

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

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

- 30 (i) soliciting the sale of goods or services;
- 31 (ii) receiving orders for the sale of goods or
32 services;
- 33 (iii) assisting in the use of goods or services; or
- 34 (iv) engaging in the solicitation, administration,

1 or collection of bank or retail credit accounts.

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

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

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

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

19 (725 ILCS 5/103-2.1 new)

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

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

27 In this Section, "custodial interrogation" means any
28 interrogation during which the person being interrogated is
29 not free to leave and a question is asked that is designed to
30 elicit an incriminating response.

31 In this Section, "place of detention" means a facility
32 under the control of a law enforcement agency.

1 (b) An oral, written, or sign language statement of an
2 accused made as a result of a custodial interrogation at a
3 police station or other place of detention shall be presumed
4 to be inadmissible as evidence against the accused in any
5 criminal proceeding brought under Section 9-1, 9-1.2, 9-2,
6 9-2.1, 9-3, 9-3.2, 9-3.3, 12-13, 12-14, 12-14.1, 12-15, or
7 12-16 of the Criminal Code of 1961, unless:

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

10 (2) prior to the custodial interrogation but during
11 the recording the accused is given the following
12 warnings:

13 (A) that the accused has the right to remain
14 silent and not make any statement at all, and that
15 any statement the accused makes may be used against
16 the accused at his or her trial;

17 (B) that any statement the accused makes may be
18 used as evidence against the accused in court;

19 (C) that the accused has the right to have an
20 attorney present to advise him or her prior to and
21 during any questioning; and

22 (D) that if the accused is unable to employ an
23 attorney, he or she has the right to have an
24 attorney appointed to advise him or her prior to and
25 during any questioning;

26 (3) prior to the statement but during the recording,
27 the accused waives the rights described in paragraph (2);

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

30 (5) all voices on the recording are identifiable;
31 and

32 (6) not later than the 20th day before the date of
33 any proceeding at which the statement is to be offered as
34 evidence against the defendant, the attorney representing

1 the defendant is permitted to review a true, complete,
2 and accurate copy of all recordings of the defendant made
3 under this Section.

4 (c) In addition to the requirements of subsection (b) of
5 this Section, a written statement made by an accused as a
6 result of a custodial interrogation at a police station or
7 other place of detention is presumed to be inadmissible as
8 evidence against him or her in any criminal proceeding unless
9 it is shown on the face of the statement that:

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

13 (A) he or she has the right to remain silent
14 and not make any statement at all and that any
15 statement he or she makes may be used against him or
16 her at his or her trial;

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

19 (C) He or she has the right to have an
20 attorney present to advise him or her prior to and
21 during any questioning; and

22 (D) if he or she is unable to employ an
23 attorney, he or she has the right to have an
24 attorney appointed to advise him or her prior to and
25 during any questioning; and

26 (2) the accused, prior to and during the making of
27 the statement, waived the rights set out in the warning
28 prescribed by item (1) of this subsection (c).

29 (d) Every electronic video and audio recording of any
30 statement made by an accused during a custodial interrogation
31 at a police station or other place of detention must be
32 preserved until such time as the defendant's conviction for
33 any offense relating to the statement is final and all direct
34 and habeas corpus appeals are exhausted, or the prosecution

1 of such offenses is barred by law.

2 (e) If the accused is a deaf person, the accused's
3 statements under subsection (b) of this Section are presumed
4 to be inadmissible against the accused unless the warnings in
5 subsection (b) are interpreted to the deaf person by an
6 interpreter who is qualified and certified by the Registry of
7 Interpreters for the Deaf.

8 (f) If the defendant can prove, by a preponderance of the
9 evidence, that he or she was subjected to a custodial
10 interrogation at a police station or other place of detention
11 prior to the custodial interrogation at a police station or
12 other place of detention and after the effective date of this
13 Section that was the subject of the electronic video and
14 audio recording, and if that prior custodial interrogation at
15 a police station or other place of detention relating to the
16 same offense was not recorded as required by this Section,
17 then any statements made by the defendant during or following
18 that non-recorded custodial interrogation at a police station
19 or other place of detention, even if otherwise in compliance
20 with this Section, are presumed to be inadmissible in any
21 criminal proceeding against the defendant except for the
22 purposes of impeachment.

23 (g) Nothing in this Section precludes the admission (i)
24 of a statement made by the accused in open court at his or
25 her trial, before a grand jury, or at a preliminary hearing,
26 (ii) of a statement that is res gestae of the arrest or of
27 the offense, (iii) of a statement made during a custodial
28 interrogation that was not recorded as required by this
29 Section, because video or audio recording, or both, was not
30 feasible, (iv) of a voluntary statement, whether or not the
31 result of a custodial interrogation, that has a bearing on
32 the credibility of the accused as a witness, (v) of a
33 statement made under exigent circumstances, (vi) of a
34 spontaneous statement that is not made in response to a

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

24 (h) The presumption of inadmissibility of a statement
25 made by a suspect at a custodial interrogation may be
26 overcome by clear and convincing evidence that the statement
27 was voluntarily given and is reliable.

28 Section 95. The State Mandates Act is amended by adding
29 Section 8.25 as follows:

30 (30 ILCS 805/8.25 new)

31 Sec. 8.25. Exempt mandate. Notwithstanding Sections 6
32 and 8 of this Act, no reimbursement by the State is required

1 for the implementation of any mandate created by this
2 amendatory Act of the 92nd General Assembly.

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