

1 AMENDMENT TO HOUSE BILL 2740

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2740 by replacing  
3 the title with the following:

4 "AN ACT concerning recording of statements in criminal  
5 investigations."; and

6 by replacing everything after the enacting clause with the  
7 following:

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

10 (20 ILCS 3930/7.5 new)

11 Sec. 7.5. Grants for electronic recording equipment.

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

16 (b) The Authority shall promulgate rules to implement  
17 this Section.

18 Section 5. The Illinois Police Training Act is amended  
19 by adding Section 10.2 as follows:

(50 ILCS 705/10.2 new)

Sec. 10.2. Training of police officers to conduct electronic interrogations. From appropriations made to it for that purpose, the Board shall initiate, administer, and conduct training programs for permanent police officers, part-time police officers, and recruits on the methods and technical aspects of conducting electronic recordings of interrogations.

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

(705 ILCS 405/5-401.5 new)

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

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

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

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

(b) An oral or sign language statement of a minor who, at the time of the commission of the offense was under the age of 17 years, made as a result of a custodial interrogation conducted at a police station or other place of detention on or after the effective date of this amendatory Act of the 92nd General Assembly shall be presumed to be inadmissible as evidence against the minor in any criminal proceeding or

1 juvenile court proceeding, for an act that if committed by an  
2 adult would be brought under Section 9-1, 9-1.2, 9-2, 9-2.1,  
3 9-3, 9-3.2, 9-3.3, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of  
4 the Criminal Code of 1961 unless:

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

7 (2) the recording is accurate and has not been  
8 altered; and

9 (3) not later than the 20th day before the date of  
10 any proceeding in criminal or juvenile court at which the  
11 statement is to be admitted as evidence against the  
12 minor, the attorney representing the minor is permitted  
13 to review a true, complete, and accurate copy of all  
14 recordings of the minor made under this Section.

15 (c) Every electronic recording of any statement made by a  
16 minor during a custodial interrogation at a police station or  
17 other place of detention must be preserved until such time as  
18 the minor's adjudication for any offense relating to the  
19 statement is final and all direct and habeas corpus appeals  
20 are exhausted, or the prosecution of such offenses is barred  
21 by law.

22 (d) If the court finds, by a preponderance of the  
23 evidence, that the minor was subjected to a custodial  
24 interrogation at a police station or other place of detention  
25 prior to the custodial interrogation at a police station or  
26 other place of detention and after the effective date of this  
27 amendatory Act of the 92nd General Assembly that was the  
28 subject of the electronic recording, and if that prior  
29 custodial interrogation at a police station or other place of  
30 detention relating to the same offense was not recorded as  
31 required by this Section, then any statements made by the  
32 minor during or following that non-recorded custodial  
33 interrogation at a police station or other place of  
34 detention, even if otherwise in compliance with this Section,

1 are presumed to be inadmissible in any criminal proceeding or  
2 juvenile court proceeding against the minor except for the  
3 purposes of impeachment.

4 (e) Nothing in this Section precludes the admission (i)  
5 of a statement made by the minor in open court in any  
6 criminal proceeding or juvenile court proceeding, before a  
7 grand jury, or at a preliminary hearing, (ii) of a statement  
8 made during a custodial interrogation that was not recorded  
9 as required by this Section because electronic recording was  
10 not feasible, (iii) of a voluntary statement, whether or not  
11 the result of a custodial interrogation, that has a bearing  
12 on the credibility of the accused as a witness, (iv) of a  
13 statement made under exigent circumstances, (v) of a  
14 spontaneous statement that is not made in response to a  
15 question, (vi) of a statement made after questioning that is  
16 routinely asked during the processing of the arrest of the  
17 suspect, (vii) of a statement made during a custodial  
18 interrogation by a suspect who agrees, prior to making the  
19 statement, to respond to the interrogator's questions only if  
20 an electronic recording is not made of the statement,  
21 provided that an electronic recording is made of the  
22 statement of agreeing to respond to the interrogator's  
23 question, only if a recording is not made of the statement,  
24 (viii) of a statement made during a custodial interrogation  
25 that is conducted out-of-state, (ix) of a statement made by a  
26 suspect who is being interrogated simultaneously with other  
27 suspects concerning the same offense, but only to the extent  
28 that no electric recording equipment is available because it  
29 is being utilized for the interrogations of the other  
30 suspects for the same offense, (x) of a statement given at a  
31 time when the interrogators are unaware that a death or an  
32 act of sexual assault or sexual conduct has in fact occurred,  
33 or (xi) of any other statement that may be admissible under  
34 law. The State shall bear the burden of proving, by a

1 preponderance of the evidence, that one of the exceptions  
2 described in this subsection (e) is applicable. Nothing in  
3 this Section precludes the admission of a statement,  
4 otherwise inadmissible under this Section, that is used only  
5 for impeachment and not as substantive evidence.

6 (f) The presumption of inadmissibility of a statement  
7 made by a suspect at a custodial interrogation may be  
8 overcome by a preponderance of the evidence that the  
9 statement was voluntarily given and is reliable, based on the  
10 totality of the circumstances.

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

13 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

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

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

18 (b) Hearing conversation when heard by employees of any  
19 common carrier by wire incidental to the normal course of  
20 their employment in the operation, maintenance or repair of  
21 the equipment of such common carrier by wire so long as no  
22 information obtained thereby is used or divulged by the  
23 hearer;

24 (c) Any broadcast by radio, television or otherwise  
25 whether it be a broadcast or recorded for the purpose of  
26 later broadcasts of any function where the public is in  
27 attendance and the conversations are overheard incidental to  
28 the main purpose for which such broadcasts are then being  
29 made;

30 (d) Recording or listening with the aid of any device to  
31 any emergency communication made in the normal course of  
32 operations by any federal, state or local law enforcement

1 agency or institutions dealing in emergency services,  
2 including, but not limited to, hospitals, clinics, ambulance  
3 services, fire fighting agencies, any public utility,  
4 emergency repair facility, civilian defense establishment or  
5 military installation;

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

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

20 (g) With prior notification to the State's Attorney of  
21 the county in which it is to occur, recording or listening  
22 with the aid of any device to any conversation where a law  
23 enforcement officer, or any person acting at the direction of  
24 law enforcement, is a party to the conversation and has  
25 consented to it being intercepted or recorded under  
26 circumstances where the use of the device is necessary for  
27 the protection of the law enforcement officer or any person  
28 acting at the direction of law enforcement, in the course of  
29 an investigation of a forcible felony, ~~a felony violation of~~  
30 ~~the Illinois Controlled Substances Act, a felony violation of~~  
31 ~~the Cannabis Control Act,~~ or any "streetgang related" or  
32 "gang-related" felony as those terms are defined in the  
33 Illinois Streetgang Terrorism Omnibus Prevention Act. Any  
34 recording or evidence derived as the result of this exemption

1 shall be inadmissible in any proceeding, criminal, civil or  
2 administrative, except (i) where a party to the conversation  
3 suffers great bodily injury or is killed during such  
4 conversation, or (ii) when used as direct impeachment of a  
5 witness concerning matters contained in the interception or  
6 recording. The Director of the Department of State Police  
7 shall issue regulations as are necessary concerning the use  
8 of devices, retention of tape recordings, and reports  
9 regarding their use;

10 (h) Recordings made simultaneously with a video  
11 recording of an oral conversation between a peace officer,  
12 who has identified his or her office, and a person stopped  
13 for an investigation of an offense under the Illinois Vehicle  
14 Code;

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

24 (j) The use of a telephone monitoring device by either  
25 (1) a corporation or other business entity engaged in  
26 marketing or opinion research or (2) a corporation or other  
27 business entity engaged in telephone solicitation, as defined  
28 in this subsection, to record or listen to oral telephone  
29 solicitation conversations or marketing or opinion research  
30 conversations by an employee of the corporation or other  
31 business entity when:

32 (i) the monitoring is used for the purpose of  
33 service quality control of marketing or opinion research  
34 or telephone solicitation, the education or training of

1 employees or contractors engaged in marketing or opinion  
2 research or telephone solicitation, or internal research  
3 related to marketing or opinion research or telephone  
4 solicitation; and

5 (ii) the monitoring is used with the consent of at  
6 least one person who is an active party to the marketing  
7 or opinion research conversation or telephone  
8 solicitation conversation being monitored.

9 No communication or conversation or any part, portion, or  
10 aspect of the communication or conversation made, acquired,  
11 or obtained, directly or indirectly, under this exemption  
12 (j), may be, directly or indirectly, furnished to any law  
13 enforcement officer, agency, or official for any purpose or  
14 used in any inquiry or investigation, or used, directly or  
15 indirectly, in any administrative, judicial, or other  
16 proceeding, or divulged to any third party.

17 When recording or listening authorized by this subsection  
18 (j) on telephone lines used for marketing or opinion research  
19 or telephone solicitation purposes results in recording or  
20 listening to a conversation that does not relate to marketing  
21 or opinion research or telephone solicitation; the person  
22 recording or listening shall, immediately upon determining  
23 that the conversation does not relate to marketing or opinion  
24 research or telephone solicitation, terminate the recording  
25 or listening and destroy any such recording as soon as is  
26 practicable.

27 Business entities that use a telephone monitoring or  
28 telephone recording system pursuant to this exemption (j)  
29 shall provide current and prospective employees with notice  
30 that the monitoring or recordings may occur during the course  
31 of their employment. The notice shall include prominent  
32 signage notification within the workplace.

33 Business entities that use a telephone monitoring or  
34 telephone recording system pursuant to this exemption (j)



1 shall provide their employees or agents with access to  
2 personal-only telephone lines which may be pay telephones,  
3 that are not subject to telephone monitoring or telephone  
4 recording.

5 For the purposes of this subsection (j), "telephone  
6 solicitation" means a communication through the use of a  
7 telephone by live operators:

- 8 (i) soliciting the sale of goods or services;
- 9 (ii) receiving orders for the sale of goods or  
10 services;
- 11 (iii) assisting in the use of goods or services; or
- 12 (iv) engaging in the solicitation, administration,  
13 or collection of bank or retail credit accounts.

14 For the purposes of this subsection (j), "marketing or  
15 opinion research" means a marketing or opinion research  
16 interview conducted by a live telephone interviewer engaged  
17 by a corporation or other business entity whose principal  
18 business is the design, conduct, and analysis of polls and  
19 surveys measuring the opinions, attitudes, and responses of  
20 respondents toward products and services, or social or  
21 political issues, or both.

22 (k) Electronic recordings, including but not limited to,  
23 a motion picture, videotape, or other visual and audio  
24 recording, made of a custodial interrogation of an individual  
25 at a police station or other place of detention by a law  
26 enforcement officer under Section 5-401.5 of the Juvenile  
27 Court Act of 1987 or Section 103-2.1 of the Code of Criminal  
28 Procedure of 1963.

29 (l) With prior notification to and verbal approval of  
30 the State's Attorney or his or her designee of the county in  
31 which the conversation is anticipated to occur, recording or  
32 listening with the aid of an eavesdropping device to a  
33 conversation in which a law enforcement officer, or any  
34 person acting at the direction of a law enforcement officer,

1 is a party to an undercover conversation and has consented to  
2 the conversation being intercepted or recorded in the course  
3 of an investigation of a felony violation of the Illinois  
4 Controlled Substances Act or a felony violation of the  
5 Cannabis Control Act. The Director of State Police shall  
6 adopt any necessary rules concerning the use of devices,  
7 retention of recording media, and reports regarding their  
8 use.

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

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

12 (725 ILCS 5/103-2.1 new)

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

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

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

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

26 (b) An oral or sign language statement of an accused made  
27 as a result of a custodial interrogation at a police station  
28 or other place of detention shall be presumed to be  
29 inadmissible as evidence against the accused in any criminal  
30 proceeding brought under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3,  
31 9-3.2, 9-3.3, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the  
32 Criminal Code of 1961 unless:

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

3           (2) the recording is accurate and has not been  
4 altered; and

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

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

18          (d) If the court finds, by a preponderance of the  
19 evidence, that the defendant was subjected to a custodial  
20 interrogation at a police station or other place of detention  
21 prior to the custodial interrogation at a police station or  
22 other place of detention and after the effective date of this  
23 amendatory Act of the 92nd General Assembly that was the  
24 subject of the electronic recording, and if that prior  
25 custodial interrogation at a police station or other place of  
26 detention relating to the same offense was not recorded as  
27 required by this Section, then any statements made by the  
28 defendant during or following that non-recorded custodial  
29 interrogation at a police station or other place of  
30 detention, even if otherwise in compliance with this Section,  
31 are presumed to be inadmissible in any criminal proceeding  
32 against the defendant except for the purposes of impeachment.

33          (e) Nothing in this Section precludes the admission (i)  
34 of a statement made by the accused in open court at his or

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

1       (f) The presumption of inadmissibility of a statement  
2       made by a suspect at a custodial interrogation may be  
3       overcome by a preponderance of the evidence that the  
4       statement was voluntarily given and is reliable, based on the  
5       totality of the circumstances.

6       Section 95. The State Mandates Act is amended by adding  
7       Section 8.25 as follows:

8             (30 ILCS 805/8.25 new)

9       Sec. 8.25. Exempt mandate. Notwithstanding Sections 6  
10       and 8 of this Act, no reimbursement by the State is required  
11       for the implementation of any mandate created by this  
12       amendatory Act of the 92nd General Assembly.

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