

1 AMENDMENT TO HOUSE BILL 3119

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3119 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Nursing Home Care Act is amended by  
5 adding Article IIIB as follows:

6 (210 ILCS 45/Art. Heading IIIB new)

7 ARTICLE IIIB. ELECTRONIC MONITORING OF RESIDENT'S ROOM

8 (210 ILCS 45/3B-5 new)

9 Sec. 3B-5. Definitions. As used in this Article:

10 "Authorized electronic monitoring" means the placement of  
11 an electronic monitoring device in the room of a resident of  
12 a facility and making tapes or recordings with the device  
13 after making a request to the facility to allow electronic  
14 monitoring.

15 "Electronic monitoring device" includes video  
16 surveillance cameras installed in the room of a resident.

17 "Electronic monitoring device" does not include an  
18 electronic, mechanical, or other device that is specifically  
19 used for the nonconsensual interception of wire or electronic  
20 communications.

1 (210 ILCS 45/3B-10 new)

2 Sec. 3B-10. Civil liability.

3 (a) It is a defense to prosecution under any law of this  
4 State under which it is an offense to intercept a  
5 communication or disclose or use an intercepted  
6 communication, that the communication was intercepted by an  
7 electronic monitoring device placed in the room of a resident  
8 of a facility.

9 (b) This Article does not affect whether a person may be  
10 held to be civilly liable under any other law in connection  
11 with placing an electronic monitoring device in the room of a  
12 resident of a facility or in connection with using or  
13 disclosing a tape or recording made by the device except as  
14 specifically provided by this Article or to the extent that  
15 liability is affected by a consent or waiver signed under  
16 this Article or the fact that authorized electronic  
17 monitoring is required to be conducted with notice to persons  
18 who enter a resident's room.

19 (210 ILCS 45/3B-15 new)

20 Sec. 3B-15. Covert use of electronic monitoring device;  
21 liability of Department or facility.

22 (a) For the purposes of this Article, the placement and  
23 use of an electronic monitoring device in the room of a  
24 resident is considered to be covert if (i) the placement and  
25 use of the device is not open and obvious and (ii) the  
26 facility and the Department are not informed about the device  
27 by the resident, by a person who placed the device in the  
28 room, or by a person who is using the device.

29 (b) The Department and the facility may not be held to  
30 be civilly liable in connection with the covert placement or  
31 use of an electronic monitoring device in the room of a  
32 resident.

1 (210 ILCS 45/3B-20 new)

2 Sec. 3B-20. Required form on admission. The Department  
3 by rule shall prescribe a form that must be completed and  
4 signed on a resident's admission to a facility by or on  
5 behalf of the resident. The form must state all of the  
6 following:

7 (1) That a person who places an electronic  
8 monitoring device in the room of a resident or who uses  
9 or discloses a tape or other recording made by the device  
10 may be civilly liable for any unlawful violation of the  
11 privacy rights of another.

12 (2) That a person who covertly places an electronic  
13 monitoring device in the room of a resident or who  
14 consents to or acquiesces in the covert placement of the  
15 device in the room of a resident has waived any privacy  
16 right the person may have had in connection with images  
17 or sounds that may be acquired by the device.

18 (3) That a resident or the resident's guardian or  
19 legal representative is entitled to conduct authorized  
20 electronic monitoring under this Article and that, if the  
21 facility refuses to permit the electronic monitoring or  
22 fails to make reasonable physical accommodations for the  
23 authorized electronic monitoring, the person should  
24 contact the Department.

25 (4) The basic procedures that must be followed to  
26 request authorized electronic monitoring.

27 (5) The manner in which this Article affects the  
28 legal requirement to report abuse or neglect when  
29 electronic monitoring is being conducted.

30 (6) Any other information regarding covert or  
31 authorized electronic monitoring that the Department  
32 considers advisable to include on the form.

33 (210 ILCS 45/3B-25 new)

1       Sec. 3B-25. Authorized electronic monitoring; who may  
2 request.

3       (a) If a resident has the capacity to request electronic  
4 monitoring and has not been judicially declared to lack the  
5 required capacity, only the resident may request authorized  
6 electronic monitoring under this Article, notwithstanding the  
7 terms of any durable power of attorney or similar instrument.

8       (b) If a resident has been judicially declared to lack  
9 the capacity required for taking an action such as requesting  
10 electronic monitoring, only the guardian of the resident may  
11 request electronic monitoring under this Article.

12       (c) If a resident does not have capacity to request  
13 electronic monitoring but has not been judicially declared to  
14 lack the required capacity, only the legal representative of  
15 the resident may request electronic monitoring under this  
16 Article. The Department by rule shall prescribe (i)  
17 guidelines that will assist the facility, family members of  
18 residents, advocates for residents, and other interested  
19 persons in determining when a resident lacks the required  
20 capacity and (ii) who may be considered to be a resident's  
21 legal representative for purposes of this Article, including  
22 persons who may be considered the legal representative under  
23 the terms of an instrument executed by the resident when the  
24 resident had capacity and persons who may become the legal  
25 representative for the limited purpose of this Article under  
26 a procedure prescribed by the Department.

27       (210 ILCS 45/3B-30 new)

28       Sec. 3B-30. Authorized electronic monitoring; form of  
29 request; consent of other residents in room.

30       (a) A resident or the guardian or legal representative  
31 of a resident who wishes to conduct authorized electronic  
32 monitoring must make the request to the facility on a form  
33 prescribed by the Department.

1       (b) The form prescribed by the Department must require  
2 the resident or the resident's guardian or legal  
3 representative to do all of the following:

4           (1) Release the facility from any civil liability  
5 for a violation of the resident's privacy rights in  
6 connection with the use of the electronic monitoring  
7 device.

8           (2) Choose, when the electronic monitoring device  
9 is a video surveillance camera, whether the camera will  
10 always be unobstructed or whether the camera should be  
11 obstructed in specified circumstances to protect the  
12 dignity of the resident.

13           (3) If the resident resides in a multi-person room,  
14 obtain the consent of other residents in the room, using  
15 a form prescribed for this purpose by the Department, or  
16 ensure that the camera is focused on the resident for  
17 whom the monitoring is requested.

18       (c) Consent under item (3) of subsection (b) may be  
19 given only by the following:

20           (1) The other resident or residents in the room.

21           (2) The guardian of the other resident in the room,  
22 if the person has been judicially declared to lack the  
23 required capacity.

24           (3) By the legal representative who under Section  
25 25 may request electronic monitoring on behalf of the  
26 other resident in the room, if the person does not have  
27 capacity to sign the form but has not been judicially  
28 declared to lack the required capacity.

29       (d) The form prescribed by the Department under item (3)  
30 of subsection (b) must condition the consent of another  
31 resident in the room on the other resident also releasing the  
32 facility from any civil liability for a violation of the  
33 person's privacy rights in connection with the use of the  
34 electronic monitoring device.

1       (e) Another resident in the room may (i) when the  
2 proposed electronic monitoring device is a video surveillance  
3 camera, condition consent on the camera being pointed away  
4 from the consenting resident and (ii) condition consent on  
5 the use of an audio electronic monitoring device being  
6 limited or prohibited.

7       (f) If authorized electronic monitoring is being  
8 conducted in the room of a resident and another resident is  
9 moved into the room who has not yet consented to the  
10 electronic monitoring, the resident or resident's guardian or  
11 legal representative must ensure that the camera is focused  
12 only on the resident for whom the monitoring is requested.

13       (g) The Department may include other information that  
14 the Department considers to be appropriate on either of the  
15 forms that the Department is required to prescribe under this  
16 Section.

17       (h) The Department may adopt rules prescribing the place  
18 or places that a form signed under this Section must be  
19 maintained and the period for which it must be maintained.

20       (i) Authorized electronic monitoring may not commence  
21 until all request and consent forms required by this Section  
22 have been completed and returned to the facility and must be  
23 conducted in accordance with any limitation placed on the  
24 monitoring as a condition of the consent given by or on  
25 behalf of another resident in the room.

26       (j) If the other residents in the room object to the  
27 monitoring, the facility must allow the resident for whom the  
28 monitoring request is made to occupy the bed farthest from  
29 the door in order to protect the privacy rights of the other  
30 residents in the room.

31       (210 ILCS 45/3B-35 new)

32       Sec. 3B-35. Authorized electronic monitoring; general  
33 provisions.

1       (a) A facility shall permit a resident or the resident's  
2 guardian or legal representative to monitor the room of the  
3 resident through the use of electronic monitoring devices.

4       (b) The facility shall require a resident who conducts  
5 authorized electronic monitoring or the resident's guardian  
6 or legal representative to post and maintain a conspicuous  
7 notice at the entrance to the resident's room. The notice  
8 must state that the room is being monitored by an electronic  
9 monitoring device.

10       (c) Authorized electronic monitoring conducted under  
11 this Article is not compulsory and may be conducted only at  
12 the request of the resident or the resident's guardian or  
13 legal representative.

14       (d) A facility may not refuse to admit an individual to  
15 residency in the facility and may not remove a resident from  
16 the facility because of a request to conduct authorized  
17 electronic monitoring. A facility may not remove a resident  
18 from the facility because covert electronic monitoring is  
19 being conducted by or on behalf of a resident.

20       (e) A facility shall make reasonable physical  
21 accommodation for authorized electronic monitoring, including  
22 (i) providing a reasonably secure place to mount the video  
23 surveillance camera or other electronic monitoring device and  
24 (ii) providing access to power sources for the video  
25 surveillance camera or other electronic monitoring device.

26       (f) The resident or the resident's guardian or legal  
27 representative must pay for all costs associated with  
28 conducting electronic monitoring, other than the costs of  
29 electricity. The resident or the resident's guardian or legal  
30 representative is responsible for all costs associated with  
31 the installation of the equipment and maintaining the  
32 equipment.

33       (g) A facility may require an electronic monitoring  
34 device to be installed in a manner that is safe for

1 residents, employees, or visitors who may be moving about the  
2 room. The Department may adopt rules regarding the safe  
3 placement of an electronic monitoring device.

4 (h) If authorized electronic monitoring is conducted,  
5 the facility may require the resident or the resident's  
6 guardian or legal representative to conduct the electronic  
7 monitoring in plain view.

8 (i) The person who requests the electronic monitoring  
9 shall maintain control of all tapes or recordings resulting  
10 from the monitoring.

11 (210 ILCS 45/3B-40 new)

12 Sec. 3B-40. Reporting abuse and neglect.

13 (a) For purposes of the duty to report abuse or neglect  
14 under Section 2-107 of this Act, a person who is conducting  
15 electronic monitoring on behalf of a resident under this  
16 Article is considered to have viewed a tape or recording made  
17 by the electronic monitoring device within 30 days after the  
18 date the tape or recording is made.

19 (b) If a resident who has capacity to determine that the  
20 resident has been abused or neglected and who is conducting  
21 electronic monitoring under this Article gives a tape or  
22 recording made by the electronic monitoring device to a  
23 person and directs the person to view the tape or recording  
24 to determine whether abuse or neglect has occurred, the  
25 person to whom the resident gives the tape or recording is  
26 considered to have viewed the tape or recording within 14  
27 days after the date the person receives the tape or recording  
28 for purposes of the duty to report abuse or neglect under  
29 Section 2-107 of this Act.

30 (c) A person is required to report abuse based on the  
31 person's viewing of a tape or recording only if the incident  
32 of abuse is acquired on the tape or recording. A person is  
33 required to report neglect based on the person's viewing of a



1 tape or recording only if it is clear from viewing the tape  
2 or recording that neglect has occurred.

3 (d) If abuse or neglect of the resident is reported to  
4 the facility and the facility requests a copy of any relevant  
5 tape or recording made by an electronic monitoring device,  
6 the person who possesses the tape or recording shall provide  
7 the facility with a copy at the facility's expense.

8 Section 99. Effective date. This Act takes effect on July  
9 1, 2004."