

1 AN ACT concerning criminal law.

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

4 Section 5. The Criminal Code of 2012 is amended by changing
5 Section 14-3 as follows:

6 (720 ILCS 5/14-3)

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

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

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

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

21 (d) Recording or listening with the aid of any device to
22 any emergency communication made in the normal course of
23 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 be
7 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 and
14 shall not be otherwise disseminated. Failure on the part of the
15 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 of
19 this Section;

20 (g) With prior notification to the State's Attorney of the
21 county in which it is to occur, recording or listening with the
22 aid of any device to any conversation where a law enforcement
23 officer, or any person acting at the direction of law
24 enforcement, is a party to the conversation and has consented
25 to it being intercepted or recorded under circumstances where
26 the use of the device is necessary for the protection of the

1 law enforcement officer or any person acting at the direction
2 of law enforcement, in the course of an investigation of a
3 forcible felony, a felony offense of involuntary servitude,
4 involuntary sexual servitude of a minor, or trafficking in
5 persons under Section 10-9 of this Code, an offense involving
6 prostitution, solicitation of a sexual act, or pandering, a
7 felony violation of the Illinois Controlled Substances Act, a
8 felony violation of the Cannabis Control Act, a felony
9 violation of the Methamphetamine Control and Community
10 Protection Act, any "streetgang related" or "gang-related"
11 felony as those terms are defined in the Illinois Streetgang
12 Terrorism Omnibus Prevention Act, or any felony offense
13 involving any weapon listed in paragraphs (1) through (11) of
14 subsection (a) of Section 24-1 of this Code. Any recording or
15 evidence derived as the result of this exemption shall be
16 inadmissible in any proceeding, criminal, civil or
17 administrative, except (i) where a party to the conversation
18 suffers great bodily injury or is killed during such
19 conversation, or (ii) when used as direct impeachment of a
20 witness concerning matters contained in the interception or
21 recording. The Director of the Department of State Police shall
22 issue regulations as are necessary concerning the use of
23 devices, retention of tape recordings, and reports regarding
24 their use;

25 (g-5) With approval of the State's Attorney of the county
26 in which it is to occur, recording or listening with the aid of

1 any device to any conversation where a law enforcement officer,
2 or any person acting at the direction of law enforcement, is a
3 party to the conversation and has consented to it being
4 intercepted or recorded in the course of an investigation of
5 any offense defined in Article 29D of this Code. In all such
6 cases, an application for an order approving the previous or
7 continuing use of an eavesdropping device must be made within
8 48 hours of the commencement of such use. In the absence of
9 such an order, or upon its denial, any continuing use shall
10 immediately terminate. The Director of State Police shall issue
11 rules as are necessary concerning the use of devices, retention
12 of tape recordings, and reports regarding their use.

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

21 This subsection (g-5) is inoperative on and after January
22 1, 2005. No conversations recorded or monitored pursuant to
23 this subsection (g-5) shall be inadmissible in a court of law
24 by virtue of the repeal of this subsection (g-5) on January 1,
25 2005;

26 (g-6) With approval of the State's Attorney of the county

1 in which it is to occur, recording or listening with the aid of
2 any device to any conversation where a law enforcement officer,
3 or any person acting at the direction of law enforcement, is a
4 party to the conversation and has consented to it being
5 intercepted or recorded in the course of an investigation of
6 involuntary servitude, involuntary sexual servitude of a
7 minor, trafficking in persons, child pornography, aggravated
8 child pornography, indecent solicitation of a child, child
9 abduction, luring of a minor, sexual exploitation of a child,
10 predatory criminal sexual assault of a child, aggravated
11 criminal sexual abuse in which the victim of the offense was at
12 the time of the commission of the offense under 18 years of
13 age, criminal sexual abuse by force or threat of force in which
14 the victim of the offense was at the time of the commission of
15 the offense under 18 years of age, or aggravated criminal
16 sexual assault in which the victim of the offense was at the
17 time of the commission of the offense under 18 years of age. In
18 all such cases, an application for an order approving the
19 previous or continuing use of an eavesdropping device must be
20 made within 48 hours of the commencement of such use. In the
21 absence of such an order, or upon its denial, any continuing
22 use shall immediately terminate. The Director of State Police
23 shall issue rules as are necessary concerning the use of
24 devices, retention of recordings, and reports regarding their
25 use. Any recording or evidence obtained or derived in the
26 course of an investigation of involuntary servitude,

1 involuntary sexual servitude of a minor, trafficking in
2 persons, child pornography, aggravated child pornography,
3 indecent solicitation of a child, child abduction, luring of a
4 minor, sexual exploitation of a child, predatory criminal
5 sexual assault of a child, aggravated criminal sexual abuse in
6 which the victim of the offense was at the time of the
7 commission of the offense under 18 years of age, criminal
8 sexual abuse by force or threat of force in which the victim of
9 the offense was at the time of the commission of the offense
10 under 18 years of age, or aggravated criminal sexual assault in
11 which the victim of the offense was at the time of the
12 commission of the offense under 18 years of age shall, upon
13 motion of the State's Attorney or Attorney General prosecuting
14 any case involving involuntary servitude, involuntary sexual
15 servitude of a minor, trafficking in persons, child
16 pornography, aggravated child pornography, indecent
17 solicitation of a child, child abduction, luring of a minor,
18 sexual exploitation of a child, predatory criminal sexual
19 assault of a child, aggravated criminal sexual abuse in which
20 the victim of the offense was at the time of the commission of
21 the offense under 18 years of age, criminal sexual abuse by
22 force or threat of force in which the victim of the offense was
23 at the time of the commission of the offense under 18 years of
24 age, or aggravated criminal sexual assault in which the victim
25 of the offense was at the time of the commission of the offense
26 under 18 years of age, be reviewed in camera with notice to all

1 parties present by the court presiding over the criminal case,
2 and, if ruled by the court to be relevant and otherwise
3 admissible, it shall be admissible at the trial of the criminal
4 case. Absent such a ruling, any such recording or evidence
5 shall not be admissible at the trial of the criminal case;

6 (h) Recordings made simultaneously with the use of an
7 in-car video camera recording of an oral conversation between a
8 uniformed peace officer, who has identified his or her office,
9 and a person in the presence of the peace officer whenever (i)
10 an officer assigned a patrol vehicle is conducting an
11 enforcement stop; or (ii) patrol vehicle emergency lights are
12 activated or would otherwise be activated if not for the need
13 to conceal the presence of law enforcement.

14 For the purposes of this subsection (h), "enforcement stop"
15 means an action by a law enforcement officer in relation to
16 enforcement and investigation duties, including but not
17 limited to, traffic stops, pedestrian stops, abandoned vehicle
18 contacts, motorist assists, commercial motor vehicle stops,
19 roadside safety checks, requests for identification, or
20 responses to requests for emergency assistance;

21 (h-5) Recordings of utterances made by a person while in
22 the presence of a uniformed peace officer and while an occupant
23 of a police vehicle including, but not limited to, (i)
24 recordings made simultaneously with the use of an in-car video
25 camera and (ii) recordings made in the presence of the peace
26 officer utilizing video or audio systems, or both, authorized

1 by the law enforcement agency;

2 (h-10) Recordings made simultaneously with a video camera
3 recording during the use of a taser or similar weapon or device
4 by a peace officer if the weapon or device is equipped with
5 such camera;

6 (h-15) Recordings made under subsection (h), (h-5), or
7 (h-10) shall be retained by the law enforcement agency that
8 employs the peace officer who made the recordings for a storage
9 period of 90 days, unless the recordings are made as a part of
10 an arrest or the recordings are deemed evidence in any
11 criminal, civil, or administrative proceeding and then the
12 recordings must only be destroyed upon a final disposition and
13 an order from the court. Under no circumstances shall any
14 recording be altered or erased prior to the expiration of the
15 designated storage period. Upon completion of the storage
16 period, the recording medium may be erased and reissued for
17 operational use;

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

26 (j) The use of a telephone monitoring device by either (1)

1 a corporation or other business entity engaged in marketing or
2 opinion research or (2) a corporation or other business entity
3 engaged in telephone solicitation, as defined in this
4 subsection, to record or listen to oral telephone solicitation
5 conversations or marketing or opinion research conversations
6 by an employee of the corporation or other business entity
7 when:

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

15 (ii) the monitoring is used with the consent of at
16 least one person who is an active party to the marketing or
17 opinion research conversation or telephone solicitation
18 conversation being monitored.

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

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

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

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

22 For the purposes of this subsection (j), "telephone
23 solicitation" means a communication through the use of a
24 telephone by live operators:

25 (i) soliciting the sale of goods or services;

26 (ii) receiving orders for the sale of goods or

1 services;

2 (iii) assisting in the use of goods or services; or

3 (iv) engaging in the solicitation, administration, or
4 collection of bank or retail credit accounts.

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

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

20 (l) Recording the interview or statement of any person when
21 the person knows that the interview is being conducted by a law
22 enforcement officer or prosecutor and the interview takes place
23 at a police station that is currently participating in the
24 Custodial Interview Pilot Program established under the
25 Illinois Criminal Justice Information Act;

26 (m) An electronic recording, including but not limited to,

1 a motion picture, videotape, digital, or other visual or audio
2 recording, made of the interior of a school bus while the
3 school bus is being used in the transportation of students to
4 and from school and school-sponsored activities, when the
5 school board has adopted a policy authorizing such recording,
6 notice of such recording policy is included in student
7 handbooks and other documents including the policies of the
8 school, notice of the policy regarding recording is provided to
9 parents of students, and notice of such recording is clearly
10 posted on the door of and inside the school bus.

11 Recordings made pursuant to this subsection (m) shall be
12 confidential records and may only be used by school officials
13 (or their designees) and law enforcement personnel for
14 investigations, school disciplinary actions and hearings,
15 proceedings under the Juvenile Court Act of 1987, and criminal
16 prosecutions, related to incidents occurring in or around the
17 school bus;

18 (n) Recording or listening to an audio transmission from a
19 microphone placed by a person under the authority of a law
20 enforcement agency inside a bait car surveillance vehicle while
21 simultaneously capturing a photographic or video image;

22 (o) The use of an eavesdropping camera or audio device
23 during an ongoing hostage or barricade situation by a law
24 enforcement officer or individual acting on behalf of a law
25 enforcement officer when the use of such device is necessary to
26 protect the safety of the general public, hostages, or law

1 enforcement officers or anyone acting on their behalf;

2 (p) Recording or listening with the aid of any device to
3 incoming telephone calls of phone lines publicly listed or
4 advertised as the "CPS Violence Prevention Hotline", but only
5 where the notice of recording is given at the beginning of each
6 call as required by Section 34-21.8 of the School Code. The
7 recordings may be retained only by the Chicago Police
8 Department or other law enforcement authorities, and shall not
9 be otherwise retained or disseminated; ~~and~~

10 (q) (1) With prior request to and verbal approval of the
11 State's Attorney of the county in which the conversation is
12 anticipated to occur, recording or listening with the aid of an
13 eavesdropping device to a conversation in which a law
14 enforcement officer, or any person acting at the direction of a
15 law enforcement officer, is a party to the conversation and has
16 consented to the conversation being intercepted or recorded in
17 the course of an investigation of a drug offense. The State's
18 Attorney may grant this verbal approval only after determining
19 that reasonable cause exists to believe that a drug offense
20 will be committed by a specified individual or individuals
21 within a designated period of time.

22 (2) Request for approval. To invoke the exception contained
23 in this subsection (q), a law enforcement officer shall make a
24 written or verbal request for approval to the appropriate
25 State's Attorney. This request for approval shall include
26 whatever information is deemed necessary by the State's

1 Attorney but shall include, at a minimum, the following
2 information about each specified individual whom the law
3 enforcement officer believes will commit a drug offense:

4 (A) his or her full or partial name, nickname or alias;

5 (B) a physical description; or

6 (C) failing either (A) or (B) of this paragraph (2),
7 any other supporting information known to the law
8 enforcement officer at the time of the request that gives
9 rise to reasonable cause to believe the individual will
10 commit a drug offense.

11 (3) Limitations on verbal approval. Each verbal approval by
12 the State's Attorney under this subsection (q) shall be limited
13 to:

14 (A) a recording or interception conducted by a
15 specified law enforcement officer or person acting at the
16 direction of a law enforcement officer;

17 (B) recording or intercepting conversations with the
18 individuals specified in the request for approval,
19 provided that the verbal approval shall be deemed to
20 include the recording or intercepting of conversations
21 with other individuals, unknown to the law enforcement
22 officer at the time of the request for approval, who are
23 acting in conjunction with or as co-conspirators with the
24 individuals specified in the request for approval in the
25 commission of a drug offense;

26 (C) a reasonable period of time but in no event longer

1 than 24 consecutive hours.

2 (4) Admissibility of evidence. No part of the contents of
3 any wire, electronic, or oral communication that has been
4 recorded or intercepted as a result of this exception may be
5 received in evidence in any trial, hearing, or other proceeding
6 in or before any court, grand jury, department, officer,
7 agency, regulatory body, legislative committee, or other
8 authority of this State, or a political subdivision of the
9 State, other than in a prosecution of:

10 (A) a drug offense;

11 (B) a forcible felony committed directly in the course
12 of the investigation of a drug offense for which verbal
13 approval was given to record or intercept a conversation
14 under this subsection (q); or

15 (C) any other forcible felony committed while the
16 recording or interception was approved in accordance with
17 this Section (q), but for this specific category of
18 prosecutions, only if the law enforcement officer or person
19 acting at the direction of a law enforcement officer who
20 has consented to the conversation being intercepted or
21 recorded suffers great bodily injury or is killed during
22 the commission of the charged forcible felony.

23 (5) Compliance with the provisions of this subsection is a
24 prerequisite to the admissibility in evidence of any part of
25 the contents of any wire, electronic or oral communication that
26 has been intercepted as a result of this exception, but nothing

1 in this subsection shall be deemed to prevent a court from
2 otherwise excluding the evidence on any other ground, nor shall
3 anything in this subsection be deemed to prevent a court from
4 independently reviewing the admissibility of the evidence for
5 compliance with the Fourth Amendment to the U.S. Constitution
6 or with Article I, Section 6 of the Illinois Constitution.

7 (6) Use of recordings or intercepts unrelated to drug
8 offenses. Whenever any wire, electronic, or oral communication
9 has been recorded or intercepted as a result of this exception
10 that is not related to a drug offense or a forcible felony
11 committed in the course of a drug offense, no part of the
12 contents of the communication and evidence derived from the
13 communication may be received in evidence in any trial,
14 hearing, or other proceeding in or before any court, grand
15 jury, department, officer, agency, regulatory body,
16 legislative committee, or other authority of this State, or a
17 political subdivision of the State, nor may it be publicly
18 disclosed in any way.

19 (7) Definitions. For the purposes of this subsection (q)
20 only:

21 "Drug offense" includes and is limited to a felony
22 violation of one of the following: (A) the Illinois
23 Controlled Substances Act, (B) the Cannabis Control Act,
24 and (C) the Methamphetamine Control and Community
25 Protection Act.

26 "Forcible felony" includes and is limited to those

1 offenses contained in Section 2-8 of the Criminal Code of
2 1961 as of the effective date of this amendatory Act of the
3 97th General Assembly, and only as those offenses have been
4 defined by law or judicial interpretation as of that date.

5 "State's Attorney" includes and is limited to the
6 State's Attorney or an assistant State's Attorney
7 designated by the State's Attorney to provide verbal
8 approval to record or intercept conversations under this
9 subsection (q).

10 (8) Sunset. This subsection (q) is inoperative on and after
11 January 1, 2015. No conversations intercepted pursuant to this
12 subsection (q), while operative, shall be inadmissible in a
13 court of law by virtue of the inoperability of this subsection
14 (q) on January 1, 2015; and ~~and~~

15 (r) Electronic recordings, including but not limited to,
16 motion picture, videotape, digital, or other visual or audio
17 recording, made of a lineup under Section 107A-2 of the Code of
18 Criminal Procedure of 1963.

19 (Source: P.A. 97-333, eff. 8-12-11; 97-846, eff. 1-1-13;
20 97-897, eff. 1-1-13; 98-463, eff. 8-16-13.)

21 Section 10. The Code of Criminal Procedure of 1963 is
22 amended by adding Sections 107A-0.1 and 107A-2 as follows:

23 (725 ILCS 5/107A-0.1 new)

24 Sec. 107A-0.1. Definitions.

1 For the purposes of this Article:

2 "Eyewitness" means a person whose identification by
3 sight of another person may be relevant in a criminal
4 proceeding.

5 "Filler" means a person or a photograph of a person who
6 is not suspected of an offense and is included in a lineup.

7 "Independent administrator" means a lineup
8 administrator who is not participating in the
9 investigation of the criminal offense and is unaware of
10 which person in the lineup is the suspected perpetrator.

11 "Lineup" includes a photo lineup or live lineup.

12 "Lineup administrator" means the person who conducts a
13 lineup.

14 "Live lineup" means a procedure in which a group of
15 persons is displayed to an eyewitness for the purpose of
16 determining if the eyewitness is able to identify the
17 perpetrator of a crime, but does not include a showup.

18 "Photo lineup" means a procedure in which photographs
19 are displayed to an eyewitness for the purpose of
20 determining if the eyewitness is able to identify the
21 perpetrator of a crime.

22 "Sequential lineup" means a live or photo lineup in
23 which each person or photograph is presented to an
24 eyewitness separately, in a previously determined order,
25 and removed from the eyewitness's view before the next
26 person or photograph is presented, in order to determine if

1 the eyewitness is able to identify the perpetrator of a
2 crime.

3 "Showup" means a procedure in which a suspected
4 perpetrator is presented to the eyewitness at, or near, a
5 crime scene for the purpose of obtaining an immediate
6 identification.

7 "Simultaneous lineup" means a live or photo lineup in
8 which a group of persons or array of photographs is
9 presented simultaneously to an eyewitness for the purpose
10 of determining if the eyewitness is able to identify the
11 perpetrator of a crime.

12 (725 ILCS 5/107A-2 new)

13 Sec. 107A-2. Lineup procedure.

14 (a) All lineups shall be conducted using one of the
15 following methods:

16 (1) An independent administrator.

17 (2) An automated computer program or other device that
18 can automatically display a photo lineup to an eyewitness
19 in a manner that prevents the lineup administrator from
20 seeing which photograph or photographs the eyewitness is
21 viewing until after the lineup is completed. The automated
22 computer program may present the photographs to the
23 eyewitness simultaneously or sequentially, consistent with
24 the law enforcement agency guidelines required under
25 subsection (b) of this Section.

1 (3) A procedure in which photographs are placed in
2 folders, randomly numbered, and shuffled and then
3 presented to an eyewitness such that the lineup
4 administrator cannot see or know which photograph or
5 photographs are being presented to the eyewitness until
6 after the procedure is completed. The photographs may be
7 presented to the eyewitness simultaneously or
8 sequentially, consistent with the law enforcement agency
9 guidelines required under subsection (b) of this Section.

10 (4) Any other procedure that prevents the lineup
11 administrator from knowing the identity of the suspected
12 perpetrator or seeing or knowing the photographs being
13 presented to the eyewitness until after the procedure is
14 completed.

15 (b) Each law enforcement agency shall adopt written
16 guidelines setting forth when, if at all, simultaneous lineups
17 shall be conducted and when, if at all, sequential lineups
18 shall be conducted. This subsection does not establish a
19 preference for whether a law enforcement agency should conduct
20 simultaneous lineups or sequential lineups. Whether and when to
21 conduct simultaneous lineups or sequential lineups is at the
22 discretion of each law enforcement agency. If, after the
23 effective date of this amendatory Act of the 98th General
24 Assembly, a method of conducting a lineup different from a
25 simultaneous or sequential lineup is determined by the Illinois
26 Supreme Court to be sufficiently established to have gained

1 general acceptance as a reliable method for eyewitness
2 identifications and provides more accurate results than
3 simultaneous or sequential lineups, a law enforcement agency
4 may adopt written guidelines setting forth when, if at all,
5 this different method of conducting lineups shall be used and,
6 when feasible, the provisions of subsection (d) of this Section
7 shall apply to the use of these methods.

8 (c) On and after the effective date of this amendatory Act
9 of the 98th General Assembly, there is no preference as to
10 whether a law enforcement agency conducts a live lineup or a
11 photo lineup and to the extent that the common law directs
12 otherwise, this direction is abrogated.

13 (d) If a lineup administrator conducts a sequential lineup,
14 the following shall apply:

15 (1) Solely at the eyewitness's request, the lineup
16 administrator may present a person or photograph to the
17 eyewitness an additional time but only after the eyewitness
18 has first viewed each person or photograph one time.

19 (2) If the eyewitness identifies a person as a
20 perpetrator, the lineup administrator shall continue to
21 sequentially present the remaining persons or photographs
22 to the eyewitness until the eyewitness has viewed each
23 person or photograph.

24 (e) Before a lineup is conducted:

25 (1) The eyewitness shall be instructed that:

26 (A) if recording the lineup is practical, an audio

1 and video recording of the lineup will be made for the
2 purpose of accurately documenting all statements made
3 by the eyewitness, unless the eyewitness refuses to the
4 recording of the lineup, and that if a recording is
5 made it will be of the persons in the lineup and the
6 eyewitness;

7 (B) the perpetrator may or may not be presented in
8 the lineup;

9 (C) if an independent administrator is conducting
10 the lineup, the independent administrator does not
11 know the suspected perpetrator's identity;

12 (D) the eyewitness should not feel compelled to
13 make an identification;

14 (E) it is as important to exclude innocent persons
15 as it is to identify a perpetrator; and

16 (F) the investigation will continue whether or not
17 an identification is made.

18 (2) The eyewitness shall acknowledge in writing the
19 receipt of the instructions required under this subsection
20 and, if applicable, the refusal to be recorded. If the
21 eyewitness refuses to sign the acknowledgement, the lineup
22 administrator shall note the refusal of the eyewitness to
23 sign the acknowledgement and shall also sign the
24 acknowledgement.

25 (f) In conducting a lineup:

26 (1) When practicable, the lineup administrator shall

1 separate all eyewitnesses in order to prevent the
2 eyewitnesses from conferring with one another before and
3 during the lineup procedure. If separating the
4 eyewitnesses is not practicable, the lineup administrator
5 shall ensure that all eyewitnesses are monitored and that
6 they do not confer with one another before and during the
7 lineup.

8 (2) Each eyewitness shall perform the identification
9 procedures without any other eyewitness present. Each
10 eyewitness shall be given instructions regarding the
11 identification procedures without other eyewitnesses
12 present.

13 (3) The lineup shall be composed to ensure that the
14 suspected perpetrator does not unduly stand out from the
15 fillers. In addition:

16 (A) Only one suspected perpetrator shall be
17 included in a lineup.

18 (B) If the eyewitness has provided a description of
19 the perpetrator, all fillers selected shall resemble,
20 as much as practicable, the eyewitness's description
21 of the perpetrator in his or her significant features.

22 (C) At least 5 fillers shall be included in a photo
23 lineup, in addition to the suspected perpetrator.

24 (D) When practicable, at least 5 fillers shall be
25 included in a live lineup, in addition to the suspected
26 perpetrator, but in no event shall there be less than 3

1 fillers in addition to the suspected perpetrator.

2 (E) If the eyewitness has previously viewed a photo
3 lineup or live lineup in connection with the
4 identification of another person suspected of
5 involvement in the offense, the fillers in the lineup
6 in which the current suspected perpetrator
7 participates shall be different from the fillers used
8 in the prior lineups.

9 (4) If there are multiple eyewitnesses, subject to the
10 requirements in subsection (a) of this Section and to the
11 extent possible, the suspected perpetrator shall be placed
12 in a different position in the lineup or photo array for
13 each eyewitness.

14 (5) Nothing shall be communicated to the eyewitness
15 regarding the suspected perpetrator's position in the
16 lineup or regarding anything that may influence the
17 eyewitness's identification.

18 (6) No writings or information concerning any previous
19 arrest, indictment, or conviction of the suspected
20 perpetrator shall be visible or made known to the
21 eyewitness.

22 (7) If a photo lineup, the photograph of the suspected
23 perpetrator shall be contemporary and, to the extent
24 practicable, shall resemble the suspected perpetrator's
25 appearance at the time of the offense.

26 (8) If a live lineup, any identifying actions, such as

1 speech, gestures, or other movements, shall be performed by
2 all lineup participants.

3 (9) If a live lineup, all lineup participants must be
4 out of view of the eyewitness prior to the lineup.

5 (10) If an identification is made, the lineup
6 administrator shall obtain and document a statement from
7 the eyewitness at the time of the identification and in the
8 eyewitness's own words as to the eyewitness's certainty of
9 the identification. Based on the eyewitness's statement,
10 the lineup administrator shall set forth his or her
11 determination as to whether the identification is positive
12 or tentative. If the eyewitness identifies a person as the
13 perpetrator, the eyewitness shall not be provided any
14 information concerning the person before the eyewitness's
15 statement is made. When practicable, an audio or video
16 recording of the statement shall be made.

17 (11) If the eyewitness identifies a person as the
18 perpetrator, the eyewitness shall not be provided any
19 information concerning the person before the lineup
20 administrator obtains the eyewitness's statement about his
21 or her confidence in the selection.

22 (12) Unless otherwise allowed under subsection (a) of
23 this Section, there shall not be anyone present during a
24 lineup who knows the suspected perpetrator's identity,
25 except the eyewitness and suspected perpetrator's counsel
26 if required by law.

1 (g) The lineup administrator shall make an official report
2 of all lineups, which shall include all of the following
3 information:

4 (1) All identification and non-identification results
5 obtained during the lineup, signed by the eyewitness,
6 including the eyewitness's confidence statement as
7 required under paragraph (10) of subsection (f) of this
8 Section. If the eyewitness refuses to sign, the lineup
9 administrator shall note the refusal of the eyewitness to
10 sign the results and shall also sign the notation.

11 (2) The names of all persons who viewed the lineup.

12 (3) The names of all law enforcement officers and
13 counsel present during the lineup.

14 (4) The date, time, and location of the lineup.

15 (5) The words used by the eyewitness in an
16 identification, including words that describe the
17 eyewitness's certainty of identification.

18 (6) Whether it was a photo lineup or live lineup and
19 how many persons or photographs were presented in the
20 lineup.

21 (7) The sources of all persons or photographs used as
22 fillers in the lineup.

23 (8) In a photo lineup, the actual photographs shown to
24 the eyewitness.

25 (9) In a live lineup, a photograph or other visual
26 recording of the lineup that includes all persons who

1 participated in the lineup.

2 (10) If applicable, the eyewitness's refusal to be
3 recorded.

4 (11) If applicable, the reason for any
5 impracticability in strict compliance with this Section.

6 (h) Unless it is not practical or the eyewitness refuses, a
7 video record of all lineup procedures shall be made.

8 (1) If a video record is not practical or the
9 eyewitness refuses to allow a video record to be made:

10 (A) the reasons or the refusal shall be documented
11 in the official report required under subsection (g) of
12 this Section;

13 (B) an audio record shall be made, if practical;
14 and

15 (C) if a live lineup, the lineup shall be
16 photographed.

17 (2) If an audio record is not practical, the reasons
18 shall be documented in the official report required under
19 subsection (g) of this Section.

20 (i) The photographs, recordings, and the official report of
21 the lineup required by this Section shall be disclosed to
22 counsel for the accused as provided by the Illinois Supreme
23 Court Rules regarding discovery. All photographs of suspected
24 perpetrators shown to an eyewitness during a lineup shall be
25 disclosed to counsel for the accused as provided by the
26 Illinois Supreme Court Rules regarding discovery.

1 (j) All of the following shall be available as consequences
2 of compliance or noncompliance with the requirements of this
3 Section:

4 (1) Failure to comply with any of the requirements of
5 this Section shall be a factor to be considered by the
6 court in adjudicating a motion to suppress an eyewitness
7 identification or any other motion to bar an eyewitness
8 identification. These motions shall be in writing and state
9 facts showing how the identification procedure was
10 improper. This paragraph (1) makes no change to existing
11 applicable common law or statutory standards or burdens of
12 proof.

13 (2) When warranted by the evidence presented at trial,
14 the jury shall be instructed that it may consider all the
15 facts and circumstances including compliance or
16 noncompliance with this Section to assist in its weighing
17 of the identification testimony of an eyewitness.

18 (725 ILCS 5/107A-5 rep.)

19 (725 ILCS 5/107A-10 rep.)

20 Section 15. The Code of Criminal Procedure of 1963 is
21 amended by repealing Sections 107A-5 and 107A-10.