

AN ACT concerning criminal law.

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

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

(720 ILCS 5/14-3)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

involuntary sexual servitude of a minor, trafficking in persons, child pornography, aggravated child pornography, indecent solicitation of a child, child abduction, luring of a minor, sexual exploitation of a child, predatory criminal sexual assault of a child, aggravated criminal sexual abuse in which the victim of the offense was at the time of the commission of the offense under 18 years of age, criminal sexual abuse by force or threat of force in which the victim of the offense was at the time of the commission of the offense under 18 years of age, or aggravated criminal sexual assault in which the victim of the offense was at the time of the commission of the offense under 18 years of age shall, upon motion of the State's Attorney or Attorney General prosecuting any case involving involuntary servitude, involuntary sexual servitude of a minor, trafficking in persons, child pornography, aggravated child pornography, indecent solicitation of a child, child abduction, luring of a minor, sexual exploitation of a child, predatory criminal sexual assault of a child, aggravated criminal sexual abuse in which the victim of the offense was at the time of the commission of the offense under 18 years of age, criminal sexual abuse by force or threat of force in which the victim of the offense was at the time of the commission of the offense under 18 years of age, or aggravated criminal sexual assault in which the victim of the offense was at the time of the commission of the offense under 18 years of age, be reviewed in camera with notice to all

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

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

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

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

by the law enforcement agency;

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

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

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

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

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

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

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

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

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

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

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

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

- (i) soliciting the sale of goods or services;
- (ii) receiving orders for the sale of goods or

services;

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

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

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

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

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

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

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

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

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

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

enforcement officers or anyone acting on their behalf;

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

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

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

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

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

(B) a physical description; or

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

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

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

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

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

than 24 consecutive hours.

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

(A) a drug offense;

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

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

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

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

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

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

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

"Forcible felony" includes and is limited to those

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

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

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

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

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

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

(725 ILCS 5/107A-0.1 new)

Sec. 107A-0.1. Definitions.

For the purposes of this Article:

"Eyewitness" means a person viewing the lineup whose identification by sight of another person may be relevant in a criminal proceeding.

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

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

"Lineup" includes a photo lineup or live lineup.

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

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

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

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

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

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

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

(725 ILCS 5/107A-2 new)

Sec. 107A-2. Lineup procedure.

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

(1) An independent administrator, unless it is not practical.

(2) An automated computer program or other device that can automatically display a photo lineup to an eyewitness in a manner that prevents the lineup administrator from seeing which photograph or photographs the eyewitness is viewing until after the lineup is completed. The automated computer program may present the photographs to the eyewitness simultaneously or sequentially, consistent with the law enforcement agency guidelines required under

subsection (b) of this Section.

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

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

(b) Each law enforcement agency shall adopt written guidelines setting forth when, if at all, simultaneous lineups shall be conducted and when, if at all, sequential lineups shall be conducted. This subsection does not establish a preference for whether a law enforcement agency should conduct simultaneous lineups or sequential lineups. Whether and when to conduct simultaneous lineups or sequential lineups is at the discretion of each law enforcement agency. If, after the effective date of this amendatory Act of the 98th General Assembly, a method of conducting a lineup different from a simultaneous or sequential lineup is determined by the Illinois

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

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

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

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

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

(e) Before a lineup is conducted:

(1) The eyewitness shall be instructed that:

(A) if recording the lineup is practical, an audio and video recording of the lineup will be made for the purpose of accurately documenting all statements made by the eyewitness, unless the eyewitness refuses to the recording of the lineup, and that if a recording is made it will be of the persons in the lineup and the eyewitness;

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

(C) if an independent administrator is conducting the lineup, the independent administrator does not know the suspected perpetrator's identity or if the administrator conducting the lineup is not an independent administrator, the eyewitness should not assume that the lineup administrator knows which person in the lineup is the suspect;

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

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

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

(2) The eyewitness shall acknowledge in writing the receipt of the instructions required under this subsection and, if applicable, the refusal to be recorded. If the eyewitness refuses to sign the acknowledgement, the lineup

administrator shall note the refusal of the eyewitness to sign the acknowledgement and shall also sign the acknowledgement.

(f) In conducting a lineup:

(1) When practicable, the lineup administrator shall separate all eyewitnesses in order to prevent the eyewitnesses from conferring with one another before and during the lineup procedure. If separating the eyewitnesses is not practicable, the lineup administrator shall ensure that all eyewitnesses are monitored and that they do not confer with one another while waiting to view the lineup and during the lineup.

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

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

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

(B) The suspected perpetrator shall not be substantially different in appearance from the fillers based on the eyewitness's previous description of the perpetrator or based on other factors that would draw

attention to the suspected perpetrator.

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

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

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

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

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

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

eyewitness.

(7) If a photo lineup, the photograph of the suspected perpetrator shall be contemporary in relation to the photographs of the fillers and, to the extent practicable, shall resemble the suspected perpetrator's appearance at the time of the offense.

(8) If a live lineup, any identifying actions, such as speech, gestures, or other movements, shall be performed by all lineup participants.

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

(10) The lineup administrator shall obtain and document any and all statements made by the eyewitness during the lineup as to the perpetrator's identity. When practicable, an audio or video recording of the statements shall be made.

(11) If the eyewitness identifies a person as the perpetrator, the eyewitness shall not be provided any information concerning the person until after the lineup is completed.

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

(g) The lineup administrator shall make an official report

of all lineups, which shall include all of the following information:

(1) All identification and non-identification results obtained during the lineup, signed by the eyewitness, including any and all statements made by the eyewitness during the lineup as to the perpetrator's identity as required under paragraph (10) of subsection (f) of this Section. If the eyewitness refuses to sign, the lineup administrator shall note the refusal of the eyewitness to sign the results and shall also sign the notation.

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

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

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

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

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

(7) In a photo lineup, the actual photographs shown to the eyewitness.

(8) In a live lineup, a photograph or other visual recording of the lineup that includes all persons who participated in the lineup.

(9) If applicable, the eyewitness's refusal to be recorded.

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

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

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

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

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

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

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

(i) The photographs, recordings, and the official report of the lineup required by this Section shall be disclosed to counsel for the accused as provided by the Illinois Supreme Court Rules regarding discovery. All photographs of suspected perpetrators shown to an eyewitness during a lineup shall be disclosed to counsel for the accused as provided by the Illinois Supreme Court Rules regarding discovery. To protect the identity of the eyewitness and the identities of law enforcement officers used as fillers in the lineup from being disclosed to third parties, the State's Attorney shall petition

the court for a protective order under Supreme Court Rule 415 upon disclosure of the photographs or recordings to the counsel of the accused.

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

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

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

(k) Any electronic recording made during a lineup that is compiled by any law enforcement agency as required by this Section for the purposes of fulfilling the requirements of this Section shall be confidential and exempt from public inspection and copying, as provided under Section 7 of the Freedom of Information Act, and the recording shall not be transmitted to

Public Act 098-1014

HB0802 Enrolled

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any person except as necessary to comply with this Section.

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

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

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