

Here is the text of the new Illinois law (SB15) requiring electronic recording of custodial interrogations in murder case. New sections of code are underlined.

1 AN ACT in relation to interrogations.

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

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

6 (20 ILCS 3930/7.5 new)

7 Sec. 7.5. Grants for electronic recording equipment.

8 (a) The Authority, from appropriations made to it for
9 that purpose, shall make grants to local law enforcement
10 agencies for the purpose of purchasing equipment for
11 electronic recording of interrogations.

12 (b) The Authority shall promulgate rules to implement
13 this Section.

14 Section 10. The Illinois Police Training Act is amended
15 by adding Section 10.3 as follows:

16 (50 ILCS 705/10.3 new)

17 Sec. 10.3. Training of police officers to conduct
18 electronic interrogations. From appropriations made to it
19 for that purpose, the Board shall initiate, administer, and
20 conduct training programs for permanent police officers,
21 part-time police officers, and recruits on the methods and
22 technical aspects of conducting electronic recordings of
23 interrogations.

24 Section 15. The Juvenile Court Act of 1987 is amended by
25 adding Section 5-401.5 as follows:

26 (705 ILCS 405/5-401.5 new)

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

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

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

8 In this Section, "place of detention" means a building or
9 a police station that is a place of operation for a municipal
10 police department or county sheriff department or other law
11 enforcement agency at which persons are or may be held in
12 detention in connection with criminal charges against those
13 persons or allegations that those persons are delinquent
14 minors.

15 (b) An oral, written, or sign language statement of a
16 minor who, at the time of the commission of the offense was
17 under the age of 17 years, made as a result of a custodial
18 interrogation conducted at a police station or other place of
19 detention on or after the effective date of this amendatory
20 Act of the 93rd General Assembly shall be presumed to be
21 inadmissible as evidence against the minor in any criminal
22 proceeding or juvenile court proceeding, for an act that if
23 committed by an adult would be brought under Section 9-1,
24 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3, of the Criminal Code
25 of 1961 unless:

26 (1) an electronic recording is made of the
27 custodial interrogation; and

28 (2) the recording is substantially accurate and not
29 intentionally altered.

30 (c) Every electronic recording required under this
31 Section must be preserved until such time as the minor's
32 adjudication for any offense relating to the statement is
33 final and all direct and habeas corpus appeals are exhausted,
34 or the prosecution of such offenses is barred by law.

1 (d) If the court finds, by a preponderance of the
2 evidence, that the minor was subjected to a custodial
3 interrogation in violation of this Section, then any
4 statements made by the minor during or following that
5 non-recorded custodial interrogation, even if otherwise in
6 compliance with this Section, are presumed to be inadmissible
7 in any criminal proceeding or juvenile court proceeding
8 against the minor except for the purposes of impeachment.

9 (e) Nothing in this Section precludes the admission (i)
10 of a statement made by the minor in open court in any
11 criminal proceeding or juvenile court proceeding, before a
12 grand jury, or at a preliminary hearing, (ii) of a statement
13 made during a custodial interrogation that was not recorded
14 as required by this Section because electronic recording was
15 not feasible, (iii) of a voluntary statement, whether or not
16 the result of a custodial interrogation, that has a bearing
17 on the credibility of the accused as a witness, (iv) of a
18 spontaneous statement that is not made in response to a
19 question, (v) of a statement made after questioning that is
20 routinely asked during the processing of the arrest of the
21 suspect, (vi) of a statement made during a custodial
22 interrogation by a suspect who requests, prior to making the
23 statement, to respond to the interrogator's questions only if
24 an electronic recording is not made of the statement,
25 provided that an electronic recording is made of the
26 statement of agreeing to respond to the interrogator's
27 question, only if a recording is not made of the statement,
28 (vii) of a statement made during a custodial interrogation
29 that is conducted out-of-state, (viii) of a statement given
30 at a time when the interrogators are unaware that a death has
31 in fact occurred, or (ix) of any other statement that may be
32 admissible under law. The State shall bear the burden of
33 proving, by a preponderance of the evidence, that one of the
34 exceptions described in this subsection (e) is applicable.

1 Nothing in this Section precludes the admission of a
2 statement, otherwise inadmissible under this Section, that is
3 used only for impeachment and not as substantive evidence.

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

10 (g) Any electronic recording of any statement made by a
11 minor during a custodial interrogation that is compiled by
12 any law enforcement agency as required by this Section for
13 the purposes of fulfilling the requirements of this Section
14 shall be confidential and exempt from public inspection and
15 copying, as provided under Section 7 of the Freedom of
16 Information Act, and the information shall not be transmitted
17 to anyone except as needed to comply with this Section.

18 Section 20. The Criminal Code of 1961 is amended by
19 changing Section 14-3 as follows:

20 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

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

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

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

31 (c) Any broadcast by radio, television or otherwise
32 whether it be a broadcast or recorded for the purpose of

2 attendance and the conversations are overheard incidental to
3 the main purpose for which such broadcasts are then being
4 made;

5 (d) Recording or listening with the aid of any device to
6 any emergency communication made in the normal course of
7 operations by any federal, state or local law enforcement
8 agency or institutions dealing in emergency services,
9 including, but not limited to, hospitals, clinics, ambulance
10 services, fire fighting agencies, any public utility,
11 emergency repair facility, civilian defense establishment or
12 military installation;

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

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

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

1 acting at the direction of law enforcement, in the course of
2 an investigation of a forcible felony, a felony violation of

3 the Illinois Controlled Substances Act, a felony violation of
4 the Cannabis Control Act, or any "streetgang related" or
5 "gang-related" felony as those terms are defined in the
6 Illinois Streetgang Terrorism Omnibus Prevention Act. Any
7 recording or evidence derived as the result of this exemption
8 shall be inadmissible in any proceeding, criminal, civil or
9 administrative, except (i) where a party to the conversation
10 suffers great bodily injury or is killed during such
11 conversation, or (ii) when used as direct impeachment of a
12 witness concerning matters contained in the interception or
13 recording. The Director of the Department of State Police
14 shall issue regulations as are necessary concerning the use
15 of devices, retention of tape recordings, and reports
16 regarding their use;

17 (g-5) With approval of the State's Attorney of the
18 county in which it is to occur, recording or listening with
19 the aid of any device to any conversation where a law
20 enforcement officer, or any person acting at the direction of
21 law enforcement, is a party to the conversation and has
22 consented to it being intercepted or recorded in the course
23 of an investigation of any offense defined in Article 29D of
24 this Code. In all such cases, an application for an order
25 approving the previous or continuing use of an eavesdropping
26 device must be made within 48 hours of the commencement of
27 such use. In the absence of such an order, or upon its
28 denial, any continuing use shall immediately terminate. The
29 Director of State Police shall issue rules as are necessary
30 concerning the use of devices, retention of tape recordings,
31 and reports regarding their use.

32 Any recording or evidence obtained or derived in the
33 course of an investigation of any offense defined in Article
34 29D of this Code shall, upon motion of the State's Attorney

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1 or Attorney General prosecuting any violation of Article 29D,
2 be reviewed in camera with notice to all parties present by
3 the court presiding over the criminal case, and, if ruled by

4 the court to be relevant and otherwise admissible, it shall
5 be admissible at the trial of the criminal case.

6 This subsection (g-5) is inoperative on and after January
7 1, 2005. No conversations recorded or monitored pursuant to
8 this subsection (g-5) shall be inadmissible in a court of law
9 by virtue of the repeal of this subsection (g-5) on January
10 1, 2005.

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

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

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

33 (i) the monitoring is used for the purpose of
34 service quality control of marketing or opinion research

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1 or telephone solicitation, the education or training of
2 employees or contractors engaged in marketing or opinion
3 research or telephone solicitation, or internal research
4 related to marketing or opinion research or telephone

5 solicitation; and
6 (ii) the monitoring is used with the consent of at
7 least one person who is an active party to the marketing
8 or opinion research conversation or telephone
9 solicitation conversation being monitored.
10 No communication or conversation or any part, portion, or
11 aspect of the communication or conversation made, acquired,
12 or obtained, directly or indirectly, under this exemption
13 (j), may be, directly or indirectly, furnished to any law
14 enforcement officer, agency, or official for any purpose or
15 used in any inquiry or investigation, or used, directly or
16 indirectly, in any administrative, judicial, or other
17 proceeding, or divulged to any third party.
18 When recording or listening authorized by this subsection
19 (j) on telephone lines used for marketing or opinion research
20 or telephone solicitation purposes results in recording or
21 listening to a conversation that does not relate to marketing
22 or opinion research or telephone solicitation; the person
23 recording or listening shall, immediately upon determining
24 that the conversation does not relate to marketing or opinion
25 research or telephone solicitation, terminate the recording
26 or listening and destroy any such recording as soon as is
27 practicable.
28 Business entities that use a telephone monitoring or
29 telephone recording system pursuant to this exemption (j)
30 shall provide current and prospective employees with notice
31 that the monitoring or recordings may occur during the course
32 of their employment. The notice shall include prominent
33 signage notification within the workplace.
34 Business entities that use a telephone monitoring or

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1 telephone recording system pursuant to this exemption (j)
2 shall provide their employees or agents with access to
3 personal-only telephone lines which may be pay telephones,
4 that are not subject to telephone monitoring or telephone
5 recording.

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

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

10 (ii) receiving orders for the sale of goods or
11 services;

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

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

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

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

30 (Source: P.A. 91-357, eff. 7-29-99; 92-854, eff. 12-5-02.)

31 Section 25. The Code of Criminal Procedure of 1963 is
32 amended by adding Section 103-2.1 as follows:

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1 (725 ILCS 5/103-2.1 new)

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

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

8 In this Section, "place of detention" means a building or
9 a police station that is a place of operation for a municipal
10 police department or county sheriff department or other law
11 enforcement agency, not a courthouse, that is owned or
12 operated by a law enforcement agency at which persons are or
13 may be held in detention in connection with criminal charges
14 against those persons.

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

17 (b) An oral, written, or sign language statement of an
18 accused made as a result of a custodial interrogation at a
19 police station or other place of detention shall be presumed
20 to be inadmissible as evidence against the accused in any
21 criminal proceeding brought under Section 9-1, 9-1.2, 9-2,
22 9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961
23 unless:

24 (1) an electronic recording is made of the custodial
25 interrogation; and

26 (2) the recording is substantially accurate and not
27 intentionally altered.

28 (c) Every electronic recording required under this
29 Section must be preserved until such time as the defendant's
30 conviction for any offense relating to the statement is final
31 and all direct and habeas corpus appeals are exhausted, or
32 the prosecution of such offenses is barred by law.

33 (d) If the court finds, by a preponderance of the
34 evidence, that the defendant was subjected to a custodial

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1 interrogation in violation of this Section, then any
2 statements made by the defendant during or following that
3 non-recorded custodial interrogation, even if otherwise in
4 compliance with this Section, are presumed to be inadmissible
5 in any criminal proceeding against the defendant except for
6 the purposes of impeachment.

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

9 her trial, before a grand jury, or at a preliminary hearing,
10 (ii) of a statement made during a custodial interrogation
11 that was not recorded as required by this Section, because
12 electronic recording was not feasible, (iii) of a voluntary
13 statement, whether or not the result of a custodial
14 interrogation, that has a bearing on the credibility of the
15 accused as a witness, (iv) of a spontaneous statement that is
16 not made in response to a question, (v) of a statement made
17 after questioning that is routinely asked during the
18 processing of the arrest of the suspect, (vi) of a statement
19 made during a custodial interrogation by a suspect who
20 requests, prior to making the statement, to respond to the
21 interrogator's questions only if an electronic recording is
22 not made of the statement, provided that an electronic
23 recording is made of the statement of agreeing to respond to
24 the interrogator's question, only if a recording is not made
25 of the statement, (vii) of a statement made during a
26 custodial interrogation that is conducted out-of-state,
27 (viii) of a statement given at a time when the interrogators
28 are unaware that a death has in fact occurred, or (ix) of any
29 other statement that may be admissible under law. The State
30 shall bear the burden of proving, by a preponderance of the
31 evidence, that one of the exceptions described in this
32 subsection (e) is applicable. Nothing in this Section
33 precludes the admission of a statement, otherwise
34 inadmissible under this Section, that is used only for

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1 impeachment and not as substantive evidence.

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

8 (g) Any electronic recording of any statement made by an
9 accused during a custodial interrogation that is compiled by

10 any law enforcement agency as required by this Section for
11 the purposes of fulfilling the requirements of this Section
12 shall be confidential and exempt from public inspection and
13 copying, as provided under Section 7 of the Freedom of
14 Information Act, and the information shall not be transmitted
15 to anyone except as needed to comply with this Section.

16 Section 95. The State Mandates Act is amended by adding
17 Section 8.27 as follows:

18 (30 ILCS 805/8.27 new)

19 Sec. 8.27. Exempt mandate. Notwithstanding Sections 6
20 and 8 of this Act, no reimbursement by the State is required
21 for the implementation of any mandate created by this
22 amendatory Act of the 93rd General Assembly.

23 Section 99. Effective date. Sections 5, 10, 20, and 95
24 of this Act and this Section 99 take effect upon becoming
25 law. Sections 15 and 25 of this Act take effect 2 years
26 after becoming law.