

The Death Penalty Reform Bill, Senate Bill 472, now **Public Act 93-0605**, went into effect on November 19, 2003. The requirement of videotaping interrogations pursuant to House Bill 223, now **Public Act 93-0206**, will take effect July 18, 2005. Some sections of P.A. 93-0206 took effect on July 18, 2005, please refer to the bill to identify those sections.

#### **INTERNET ACCESS TO LEGISLATION –**

These bills are accessible on the internet by going to the Illinois General Assembly website. You can reach that website through the “Legislative” link on the OSAD home page.

Click on “Public Acts” on the left hand side of the screen.

Public Acts from the 93<sup>rd</sup> General Assembly will automatically appear until the 94<sup>th</sup> General Assembly convenes.

Click on the proper number group for the Public Act number, and then on the individual number you wish to see.

**PRINTING:** choose “Printer friendly version” for a clean copy of the text of the bill, which should have page numbers that match those in the index.

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p. 1        **CAPITAL PUNISHMENT REFORM STUDY COMMITTEE**  
This creates a committee to study the effectiveness of the reforms contained in the bill. We will address a data collection method through judicial rule.

p. 2        **CUSTODIAL INTERVIEW PILOT PROGRAM**  
goes into effect immediately, unlike SB15, the videotaping bill, which does not become effective for two years. It is meant to help iron out some of the nuts and bolts issues, and hopefully garner law enforcement support along the way.

- \* 4 Jurisdictions; two year minimum duration
- \* Defines electronically recorded to include audio and video
- \* Custodial interrogation — interviews in police stations, homicides only – unless local juris. decides to do more.

\* **SUBJECT TO APPROPRIATION**

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p. 3 -7     **DECERTIFICATION OF POLICE OFFICERS WHO COMMIT PERJURY IN HOMICIDE CASE** – *this provision has been superceded by HB576, which will be effective immediately upon the Governor’s signature.*

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p. 7        **AGGRAVATING FACTORS – 720 ILCS 5/9-1 – None of the aggravating factors were eliminated. Two were modified:**

p. 9        \*        **(6)(c) Felony murder redefined** – takes out forcible detention, armed violence, arson, burglary, calculated and street gang criminal drug conspiracies, as underlying felonies; substitutes “inherently violent” and lists the felonies. This was seen as a narrowing of the definition, a position with which some disagreed. There may be a vagueness challenge as to the meaning of inherently violent in the event a crime not included in the list is used as an underlying felony.

\*        **(8) Killing a witness** – Language is changed to “participating in an investigation or proceeding” and it expands the people included to judges, attorneys, etc.

p. 11      **MITIGATING FACTORS – 720 ILCS 5/9-1(c) – Two added:**  
(c)(6) history of extreme emotional or physical abuse  
(c)(7) reduced mental capacity

p. 12      **WEIGHING AGGRAVATION AND MITIGATION – 720 ILCS 5/9-1(g)**  
death is imposed if the jury determines, “after weighing the factors in aggravation and mitigation, that death is the appropriate sentence.” **INSUFFICIENT TO PRECLUDE IS GONE.**

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- p. 13      **DECERTIFICATION AS A CAPITAL CASE – 720 ILCS 5/9-1(h-5)**  
upon its own or the defendant’s motion, the trial court may decertify the case after finding of guilt or on remand if the court finds that “the only evidence supporting the defendant’s conviction” is:

The uncorroborated testimony of an informant witness concerning the confession or admission of the defendant;

a single eyewitness or accomplice w/o any corroborating evidence. (Of course no such case would ever be brought!)

Written finding required, appealable by State pursuant to Rule 604 – look for the rule change to accommodate this provision.

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- p. 13      **APPELLATE PROCEDURE**  
The IL Supreme Court can overturn a death sentence if it finds that the sentence is fundamentally unjust as applied in the particular case, “INDEPENDENT OF ANY PROCEDURAL GROUNDS FOR RELIEF.”
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- p. 14      **GUIDELINES FOR SEEKING THE DP –**  
The compromise on the issue of a statewide review panel. State’s Attorney’s Assoc. and AG must “consult” with each other to come up with some.
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- p. 14      **EXEMPTIONS TO THE EAVESDROPPING STATUTE**  
p. 17      (k) Creates the exception for the recorded interviews pursuant to the pilot program.
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- p. 17      **LINE UP AND PHOTO SPREAD PROCEDURE – CREATES THE NEW 725 ILCS 5/107A-5**

All line ups photo’ed or otherwise recorded and the recordation disclosed.

Witness signs form informing them that the suspect may not be in the line up; and that the witness should not assume that the administrator of the line up knows who the suspect is.

Fillers and suspect should not look substantially different.

These changes come from the research on sequential lineups. Sequential line ups were not required because of concerns over the requirement that the administrator not know which line-up participant is the suspect.

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- p. 18      **SEQUENTIAL LINE UP PILOT PROGRAM**  
3 JURISDICTIONS, based on size.  
One year duration  
For any offense, not just murders  
Protocols for selection and administration that are consistent with objective scientific methodology are to be developed by the jurisdictions at issue.

**Basic procedure:**

Administrator unaware of which one is suspect

Witness views pictures or people one at a time

Witness is told that perpetrator may or may not be in the array

Ask for statement of certainty in witness's own words and document the actual words.

ISP does training and reports to Governor and General Assembly at the end of the program.

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p. 19

**DISCOVERY IN CRIMINAL CASES**

Addresses the issue of cops failing to disclose everything to prosecutors and requires disclosure of exculpatory evidence regardless of whether it was documented. Field notes must be provided in murder cases; not in non-murders. **DOES NOT ADDRESS DISCLOSURE TO DEFENSE.** No sanction for failing to give information to prosecutor.

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p. 20

**MENTAL RETARDATION –**

(b) Pretrial determination; judge is the fact finder; burden by a preponderance is on the defendant. If the court finds defendant is not mentally retarded, evidence can be presented again at the mitigation stage.

(c) After a plea or bench trial, evidence is presented at mitigation. A potential challenge here.

(d) **Definition – presumption of MR at 75! coupled with adaptive and social deficits, onset prior to age 18.**

State can appeal a finding of MR. Look for Rule 604 change to accommodate this.

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p. 21

**INFORMANT TESTIMONY**

More extensive disclosure re: criminal history, inducements, history as informant among other things.

Reliability hearing prior to presentation of the witness, unless defendant waives the hearing, or the statement has been recorded.

p. 22

**WITNESS INDUCEMENTS**

Must disclose promises; other cases in which witness has testified & if any inducements were given; whether testimony has ever been changed; criminal history; “any other evidence relevant to the credibility of the witness.”

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p. 22      **DNA**  
**725 ILCS 5/116-3**      **Defendant can request a comparison analysis in addition to testing. DNA testing can be allowed “even though the results may not completely exonerate the defendant.” (addition to current statutory language).**

**Adds 5/116-5**      **Authorizes a pretrial database search, including the national database if federal criteria are met.** All documentation, correspondence, notes, reports etc. must be disclosed.

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p. 24      **POST-CONVICTION – 725 ILCS 5/122-1**

(a)(2) In a death case, an actual innocence claim can be brought when there is newly discovered evidence not available at trial that “establishes a substantial basis to believe that the defendant is actually innocent by clear and convincing evidence.” The claim must be brought “within a reasonable time period” after conviction.

(c) Redefines the time limit for filing petition in a death case to 6 months after denial of cert or the date for filing a cert. petition if none is filed.

In a non-death case the limit has been changed to within 6 months after denial of a PLA, or the date for filing same if none is filed.

NOTE: “This limitation does not apply to a petition advancing a claim of actual innocence.” To comply with the provisions of section (b), but could arguably be used for a non-death actual innocence claim as well.

p. 25      In death case, petition shall be docketed for further consideration and hearing w/in one year, but continuances may be granted where appropriate.

p. 25-26      **MENTAL RETARDATION on PC** – this provision was part of the bill prior to commutation and was really directed at MR claims for those who were on death row prior to *Atkins*.

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p. 27-30      **CAPITAL LITIGATION TRUST FUND** – Payment of DNA-related expenses is specifically authorized in the Capital Litigation Trust Fund Act now; and the sunset provision is eliminated. Funding remains a separate issue.

## VIDEOTAPING OF INTERROGATIONS –

**Creates the new 705 ILCS 405/5-401.5 pertaining to the statements of minors (page 1-3).**

**Creates the new 725 ILCS 5/103-2.1 pertaining to the statements of the accused.**

The presumption applies only to cases involving a death (see bill for the enumerated sections of the criminal code).

Of critical importance is the authorization of the Criminal Justice Authority to make grants for the purchase of equipment.

Recorded statements are exempt from the provisions of the eavesdropping statute (p. 6).

**A statement made by a minor or an accused “made as a result of a custodial interrogation at a police station or other place of detention” is presumed inadmissible if the interrogation is not recorded. The list of exceptions to that presumption is extensive.**

### 725 ILCS 5/103-2.1– p. 6-7

- p. 6**
- (a) **Custodial interrogation** – any interrogation during which a reasonable person in the subject’s position would consider him or herself to be in custody, and a question reasonably likely to elicit an incriminating response is asked.
- Place of detention** – a building or police station that is a place of operation for a municipal police, county sheriff, or other law enforcement agency.
- Electronic recording** – includes motion picture, audiotape, videotape or digital.
- (b) Sets out the presumption; statement must be electronically recorded and the recording must be substantially accurate and not intentionally altered.
- (c) Recordings must be preserved until all avenues of relief are exhausted or prosecution is barred.
- p.7**
- (d) If a defendant is interrogated in violation of this section any statements made during or following the non-recorded custodial interrogation are presumed inadmissible except for impeachment. Burden is preponderance.
- (e) **EXCEPTIONS:**
- i. statement made in open court or before grand jury
  - ii. electronic recording was not feasible (equipment or power failure was contemplated)
  - iii. a voluntary statement that has bearing on the credibility of the accused as a witness.
  - iv. a spontaneous statement not made in response to a question
  - v. statement made after routine questioning attendant to processing the arrest
  - vi. when the suspect refused to be interviewed unless there is no recording made, but the refusal/request not to record must be recorded
  - vii. an out of state custodial interrogation
  - viii. statement given at a time when investigators are unaware that a death has occurred.
  - ix any other statement that may be admissible under law.

- (f) Presumption of inadmissibility may be overcome by a preponderance of the evidence that the statement was voluntarily given and is reliable, based on the totality of the circumstances.
- (g) Recorded statements are exempt from the Freedom of Information Act.