



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3958

Introduced 2/22/2021, by Rep. Justin Slaughter

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-401.5
725 ILCS 5/103-2.1

Amends the Code of Criminal Procedure of 1963. Provides that an oral, written, or sign language statement of an accused made as a result of a custodial interrogation conducted at a police station or other place of detention shall be presumed to be inadmissible as evidence against the accused in any criminal proceeding (rather than criminal proceedings involving specified offenses) unless: (1) an electronic recording is made of the custodial interrogation; and (2) the recording is substantially accurate and not intentionally altered. Makes conforming changes to the Juvenile Court Act of 1987.

LRB102 17090 RLC 22519 b

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 Juvenile Court Act of 1987 is amended by
5 changing Section 5-401.5 as follows:

6 (705 ILCS 405/5-401.5)

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

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

13 In this Section, "electronic recording" includes motion
14 picture, audiotape, videotape, or digital recording.

15 In this Section, "place of detention" means a building or
16 a police station that is a place of operation for a municipal
17 police department or county sheriff department or other law
18 enforcement agency at which persons are or may be held in
19 detention in connection with criminal charges against those
20 persons or allegations that those persons are delinquent
21 minors.

22 (a-5) An oral, written, or sign language statement of a
23 minor, who at the time of the commission of the offense was

1 under 18 years of age, is presumed to be inadmissible when the
2 statement is obtained from the minor while the minor is
3 subject to custodial interrogation by a law enforcement
4 officer, State's Attorney, juvenile officer, or other public
5 official or employee prior to the officer, State's Attorney,
6 public official, or employee:

7 (1) continuously reading ~~reads~~ to the minor, in its
8 entirety and without stopping for purposes of a response
9 from the minor or verifying comprehension, the following
10 statement: "You have the right to remain silent. That
11 means you do not have to say anything. Anything you do say
12 can be used against you in court. You have the right to get
13 help from a lawyer. If you cannot pay for a lawyer, the
14 court will get you one for free. You can ask for a lawyer
15 at any time. You have the right to stop this interview at
16 any time."; and

17 (2) after reading the statement required by paragraph
18 (1) of this subsection (a-5), the public official or
19 employee shall ask the minor the following questions and
20 wait for the minor's response to each question:

21 (A) "Do you want to have a lawyer?"

22 (B) "Do you want to talk to me?"

23 (b) An oral, written, or sign language statement of a
24 minor who, at the time of the commission of the offense was
25 under the age of 18 years, made as a result of a custodial
26 interrogation conducted at a police station or other place of

1 ~~detention on or after the effective date of this amendatory~~
2 ~~Act of the 99th General Assembly shall be presumed to be~~
3 inadmissible as evidence against the minor in any criminal
4 proceeding or juvenile court proceeding, ~~for an act that if~~
5 ~~committed by an adult would be a misdemeanor offense under~~
6 ~~Article 11 of the Criminal Code of 2012 or any felony offense~~
7 unless:

8 (1) an electronic recording is made of the custodial
9 interrogation; and

10 (2) the recording is substantially accurate and not
11 intentionally altered.

12 (b-5) (Blank).

13 (b-10) (Blank). ~~If, during the course of an electronically~~
14 ~~recorded custodial interrogation conducted under this Section~~
15 ~~of a minor who, at the time of the commission of the offense~~
16 ~~was under the age of 18 years, the minor makes a statement that~~
17 ~~creates a reasonable suspicion to believe the minor has~~
18 ~~committed an act that if committed by an adult would be an~~
19 ~~offense other than an offense required to be recorded under~~
20 ~~subsection (b), the interrogators may, without the minor's~~
21 ~~consent, continue to record the interrogation as it relates to~~
22 ~~the other offense notwithstanding any provision of law to the~~
23 ~~contrary. Any oral, written, or sign language statement of a~~
24 ~~minor made as a result of an interrogation under this~~
25 ~~subsection shall be presumed to be inadmissible as evidence~~
26 ~~against the minor in any criminal proceeding or juvenile court~~

1 ~~proceeding, unless the recording is substantially accurate and~~
2 ~~not intentionally altered.~~

3 (c) Every electronic recording made under this Section
4 must be preserved until such time as the minor's adjudication
5 for any offense relating to the statement is final and all
6 direct and habeas corpus appeals are exhausted, or the
7 prosecution of such offenses is barred by law.

8 (d) If the court finds, by a preponderance of the
9 evidence, that the minor was subjected to a custodial
10 interrogation in violation of this Section, then any
11 statements made by the minor during or following that
12 non-recorded custodial interrogation, even if otherwise in
13 compliance with this Section, are presumed to be inadmissible
14 in any criminal proceeding or juvenile court proceeding
15 against the minor except for the purposes of impeachment.

16 (e) Nothing in this Section precludes the admission (i) of
17 a statement made by the minor in open court in any criminal
18 proceeding or juvenile court proceeding, before a grand jury,
19 or at a preliminary hearing, (ii) of a statement made during a
20 custodial interrogation that was not recorded as required by
21 this Section because electronic recording was not feasible,
22 (iii) of a voluntary statement, whether or not the result of a
23 custodial interrogation, that has a bearing on the credibility
24 of the accused as a witness, (iv) of a spontaneous statement
25 that is not made in response to a question, (v) of a statement
26 made after questioning that is routinely asked during the

1 processing of the arrest of the suspect, (vi) of a statement
2 made during a custodial interrogation by a suspect who
3 requests, prior to making the statement, to respond to the
4 interrogator's questions only if an electronic recording is
5 not made of the statement, provided that an electronic
6 recording is made of the statement of agreeing to respond to
7 the interrogator's question, only if a recording is not made
8 of the statement, (vii) of a statement made during a custodial
9 interrogation that is conducted out-of-state, (viii) of a
10 statement given in violation of subsection (b) at a time when
11 the interrogators are unaware that a death has in fact
12 occurred, (ix) (blank), or (x) of any other statement that may
13 be admissible under law. The State shall bear the burden of
14 proving, by a preponderance of the evidence, that one of the
15 exceptions described in this subsection (e) is applicable.
16 Nothing in this Section precludes the admission of a
17 statement, otherwise inadmissible under this Section, that is
18 used only for impeachment and not as substantive evidence.

19 (f) The presumption of inadmissibility of a statement made
20 by a suspect at a custodial interrogation at a police station
21 or other place of detention may be overcome by a preponderance
22 of the evidence that the statement was voluntarily given and
23 is reliable, based on the totality of the circumstances.

24 (g) Any electronic recording of any statement made by a
25 minor during a custodial interrogation that is compiled by any
26 law enforcement agency as required by this Section for the

1 purposes of fulfilling the requirements of this Section shall
2 be confidential and exempt from public inspection and copying,
3 as provided under Section 7 of the Freedom of Information Act,
4 and the information shall not be transmitted to anyone except
5 as needed to comply with this Section.

6 (h) A statement, admission, confession, or incriminating
7 information made by or obtained from a minor related to the
8 instant offense, as part of any behavioral health screening,
9 assessment, evaluation, or treatment, whether or not
10 court-ordered, shall not be admissible as evidence against the
11 minor on the issue of guilt only in the instant juvenile court
12 proceeding. The provisions of this subsection (h) are in
13 addition to and do not override any existing statutory and
14 constitutional prohibition on the admission into evidence in
15 delinquency proceedings of information obtained during
16 screening, assessment, or treatment.

17 (i) The changes made to this Section by Public Act 98-61
18 apply to statements of a minor made on or after January 1, 2014
19 (the effective date of Public Act 98-61).

20 (Source: P.A. 98-61, eff. 1-1-14; 98-547, eff. 1-1-14; 98-756,
21 eff. 7-16-14; 99-882, eff. 1-1-17.)

22 Section 10. The Code of Criminal Procedure of 1963 is
23 amended by changing Section 103-2.1 as follows:

24 (725 ILCS 5/103-2.1)

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

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

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

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

16 (a-5) An oral, written, or sign language statement of a
17 minor, who at the time of the commission of the offense was
18 under 18 years of age, is presumed to be inadmissible when the
19 statement is obtained from the minor while the minor is
20 subject to custodial interrogation by a law enforcement
21 officer, State's Attorney, juvenile officer, or other public
22 official or employee prior to the officer, State's Attorney,
23 public official, or employee:

24 (1) continuously reading ~~reads~~ to the minor, in its
25 entirety and without stopping for purposes of a response
26 from the minor or verifying comprehension, the following

1 statement: "You have the right to remain silent. That
2 means you do not have to say anything. Anything you do say
3 can be used against you in court. You have the right to get
4 help from a lawyer. If you cannot pay for a lawyer, the
5 court will get you one for free. You can ask for a lawyer
6 at any time. You have the right to stop this interview at
7 any time."; and

8 (2) after reading the statement required by paragraph
9 (1) of this subsection (a-5), the public official or
10 employee shall ask the minor the following questions and
11 wait for the minor's response to each question:

12 (A) "Do you want to have a lawyer?"

13 (B) "Do you want to talk to me?"

14 (a-10) (Blank). ~~An oral, written, or sign language~~
15 ~~statement of a minor, who at the time of the commission of the~~
16 ~~offense was under 18 years of age, made as a result of a~~
17 ~~eustodial interrogation conducted at a police station or other~~
18 ~~place of detention on or after the effective date of this~~
19 ~~amendatory Act of the 99th General Assembly shall be presumed~~
20 ~~to be inadmissible as evidence in a criminal proceeding or a~~
21 ~~juvenile court proceeding for an act that if committed by an~~
22 ~~adult would be a misdemeanor offense under Article 11 of the~~
23 ~~Criminal Code of 2012 or a felony offense under the Criminal~~
24 ~~Code of 2012 unless:~~

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

1 ~~(2) the recording is substantially accurate and not~~
2 ~~intentionally altered.~~

3 (b) An oral, written, or sign language statement of an
4 accused made as a result of a custodial interrogation
5 conducted at a police station or other place of detention
6 shall be presumed to be inadmissible as evidence against the
7 accused in any criminal proceeding ~~brought under Section 9-1,~~
8 ~~9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of~~
9 ~~1961 or the Criminal Code of 2012 or under clause (d)(1)(F) of~~
10 ~~Section 11-501 of the Illinois Vehicle Code unless:~~

11 (1) an electronic recording is made of the custodial
12 interrogation; and

13 (2) the recording is substantially accurate and not
14 intentionally altered.

15 (b-5) (Blank). ~~Under the following circumstances, an oral,~~
16 ~~written, or sign language statement of an accused made as a~~
17 ~~result of a custodial interrogation conducted at a police~~
18 ~~station or other place of detention shall be presumed to be~~
19 ~~inadmissible as evidence against the accused, unless an~~
20 ~~electronic recording is made of the custodial interrogation~~
21 ~~and the recording is substantially accurate and not~~
22 ~~intentionally altered:~~

23 ~~(1) in any criminal proceeding brought under Section~~
24 ~~11-1.40 or 20-1.1 of the Criminal Code of 1961 or the~~
25 ~~Criminal Code of 2012, if the custodial interrogation was~~
26 ~~conducted on or after June 1, 2014;~~

1 ~~(2) in any criminal proceeding brought under Section~~
2 ~~10-2, 18-4, or 19-6 of the Criminal Code of 1961 or the~~
3 ~~Criminal Code of 2012, if the custodial interrogation was~~
4 ~~conducted on or after June 1, 2015; and~~

5 ~~(3) in any criminal proceeding brought under Section~~
6 ~~11-1.30 or 18-2 or subsection (c) of Section 12-3.05 of~~
7 ~~the Criminal Code of 1961 or the Criminal Code of 2012, if~~
8 ~~the custodial interrogation was conducted on or after June~~
9 ~~1, 2016.~~

10 (b-10) (Blank). ~~If, during the course of an electronically~~
11 ~~recorded custodial interrogation conducted under this Section,~~
12 ~~the accused makes a statement that creates a reasonable~~
13 ~~suspicion to believe the accused has committed an offense~~
14 ~~other than an offense required to be recorded under subsection~~
15 ~~(b) or (b-5), the interrogators may, without the accused's~~
16 ~~consent, continue to record the interrogation as it relates to~~
17 ~~the other offense notwithstanding any provision of law to the~~
18 ~~contrary. Any oral, written, or sign language statement of an~~
19 ~~accused made as a result of an interrogation under this~~
20 ~~subsection shall be presumed to be inadmissible as evidence~~
21 ~~against the accused in any criminal proceeding, unless the~~
22 ~~recording is substantially accurate and not intentionally~~
23 ~~altered.~~

24 (c) Every electronic recording made under this Section
25 must be preserved until such time as the defendant's
26 conviction for any offense relating to the statement is final

1 and all direct and habeas corpus appeals are exhausted, or the
2 prosecution of such offenses is barred by law.

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

11 (e) Nothing in this Section precludes the admission (i) of
12 a statement made by the accused in open court at his or her
13 trial, before a grand jury, or at a preliminary hearing, (ii)
14 of a statement made during a custodial interrogation that was
15 not recorded as required by this Section, because electronic
16 recording was not feasible, (iii) of a voluntary statement,
17 whether or not the result of a custodial interrogation, that
18 has a bearing on the credibility of the accused as a witness,
19 (iv) of a spontaneous statement that is not made in response to
20 a question, (v) of a statement made after questioning that is
21 routinely asked during the processing of the arrest of the
22 suspect, (vi) of a statement made during a custodial
23 interrogation by a suspect who requests, prior to making the
24 statement, to respond to the interrogator's questions only if
25 an electronic recording is not made of the statement, provided
26 that an electronic recording is made of the statement of

1 agreeing to respond to the interrogator's question, only if a
2 recording is not made of the statement, (vii) of a statement
3 made during a custodial interrogation that is conducted
4 out-of-state, (viii) of a statement given in violation of
5 subsection (b) at a time when the interrogators are unaware
6 that a death has in fact occurred, (ix) (blank) ~~of a statement~~
7 ~~given in violation of subsection (b 5) at a time when the~~
8 ~~interrogators are unaware of facts and circumstances that~~
9 ~~would create probable cause to believe that the accused~~
10 ~~committed an offense required to be recorded under subsection~~
11 ~~(b 5),~~ or (x) of any other statement that may be admissible
12 under law. The State shall bear the burden of proving, by a
13 preponderance of the evidence, that one of the exceptions
14 described in this subsection (e) is applicable. Nothing in
15 this Section precludes the admission of a statement, otherwise
16 inadmissible under this Section, that is used only for
17 impeachment and not as substantive evidence.

18 (f) The presumption of inadmissibility of a statement made
19 by a suspect at a custodial interrogation at a police station
20 or other place of detention may be overcome by a preponderance
21 of the evidence that the statement was voluntarily given and
22 is reliable, based on the totality of the circumstances.

23 (g) Any electronic recording of any statement made by an
24 accused during a custodial interrogation that is compiled by
25 any law enforcement agency as required by this Section for the
26 purposes of fulfilling the requirements of this Section shall

1 be confidential and exempt from public inspection and copying,
2 as provided under Section 7 of the Freedom of Information Act,
3 and the information shall not be transmitted to anyone except
4 as needed to comply with this Section.

5 (Source: P.A. 98-547, eff. 1-1-14; 99-882, eff. 1-1-17.)