



Rep. Justin Slaughter

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10200HB3958ham001

LRB102 17090 JWD 25704 a

1 AMENDMENT TO HOUSE BILL 3958

2 AMENDMENT NO. _____. Amend House Bill 3958 by replacing
3 everything after the enacting clause with the following:

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

1 police department or county sheriff department or other law
2 enforcement agency at which persons are or may be held in
3 detention in connection with criminal charges against those
4 persons or allegations that those persons are delinquent
5 minors.

6 (a-5) An oral, written, or sign language statement of a
7 minor, who at the time of the commission of the offense was
8 under 18 years of age, is presumed to be inadmissible when the
9 statement is obtained from the minor while the minor is
10 subject to custodial interrogation by a law enforcement
11 officer, State's Attorney, juvenile officer, or other public
12 official or employee prior to the officer, State's Attorney,
13 public official, or employee:

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

24 (2) after reading the statement required by paragraph
25 (1) of this subsection (a-5), the public official or
26 employee shall ask the minor the following questions and

1 wait for the minor's response to each question:

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

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

4 (b) An oral, written, or sign language statement of a
5 minor who, at the time of the commission of the offense was
6 under the age of 18 years, made as a result of a custodial
7 interrogation conducted at a police station or other place of
8 detention ~~on or after the effective date of this amendatory~~
9 ~~Act of the 99th General Assembly~~ shall be presumed to be
10 inadmissible as evidence against the minor in any criminal
11 proceeding or juvenile court proceeding, for an act that if
12 committed by an adult would be a ~~misdemeanor offense under~~
13 ~~Article 11 of the Criminal Code of 2012 or any~~ felony offense
14 unless:

15 (1) an electronic recording is made of the custodial
16 interrogation; and

17 (2) the recording is substantially accurate and not
18 intentionally altered.

19 (b-5) (Blank).

20 (b-10) (Blank). ~~If, during the course of an electronically~~
21 ~~recorded custodial interrogation conducted under this Section~~
22 ~~of a minor who, at the time of the commission of the offense~~
23 ~~was under the age of 18 years, the minor makes a statement that~~
24 ~~creates a reasonable suspicion to believe the minor has~~
25 ~~committed an act that if committed by an adult would be an~~
26 ~~offense other than an offense required to be recorded under~~

1 ~~subsection (b), the interrogators may, without the minor's~~
2 ~~consent, continue to record the interrogation as it relates to~~
3 ~~the other offense notwithstanding any provision of law to the~~
4 ~~contrary. Any oral, written, or sign language statement of a~~
5 ~~minor made as a result of an interrogation under this~~
6 ~~subsection shall be presumed to be inadmissible as evidence~~
7 ~~against the minor in any criminal proceeding or juvenile court~~
8 ~~proceeding, unless the recording is substantially accurate and~~
9 ~~not intentionally altered.~~

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

15 (d) If the court finds, by a preponderance of the
16 evidence, that the minor was subjected to a custodial
17 interrogation in violation of this Section, then any
18 statements made by the minor during or following that
19 non-recorded custodial interrogation, even if otherwise in
20 compliance with this Section, are presumed to be inadmissible
21 in any criminal proceeding or juvenile court proceeding
22 against the minor except for the purposes of impeachment.

23 (e) Nothing in this Section precludes the admission (i) of
24 a statement made by the minor in open court in any criminal
25 proceeding or juvenile court proceeding, before a grand jury,
26 or at a preliminary hearing, (ii) of a statement made during a

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

26 (f) The presumption of inadmissibility of a statement made

1 by a suspect at a custodial interrogation at a police station
2 or other place of detention may be overcome by a preponderance
3 of the evidence that the statement was voluntarily given and
4 is reliable, based on the totality of the circumstances.

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

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

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

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

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

5 (725 ILCS 5/103-2.1)

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

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

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

19 In this Section, "electronic recording" includes motion
20 picture, audiotape, or videotape, or digital recording.

21 (a-5) An oral, written, or sign language statement of a
22 minor, who at the time of the commission of the offense was
23 under 18 years of age, is presumed to be inadmissible when the
24 statement is obtained from the minor while the minor is

1 subject to custodial interrogation by a law enforcement
2 officer, State's Attorney, juvenile officer, or other public
3 official or employee prior to the officer, State's Attorney,
4 public official, or employee:

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

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

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

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

21 (a-10) (Blank). ~~An oral, written, or sign language~~
22 ~~statement of a minor, who at the time of the commission of the~~
23 ~~offense was under 18 years of age, made as a result of a~~
24 ~~custodial interrogation conducted at a police station or other~~
25 ~~place of detention on or after the effective date of this~~
26 ~~amendatory Act of the 99th General Assembly shall be presumed~~

1 ~~to be inadmissible as evidence in a criminal proceeding or a~~
2 ~~juvenile court proceeding for an act that if committed by an~~
3 ~~adult would be a misdemeanor offense under Article 11 of the~~
4 ~~Criminal Code of 2012 or a felony offense under the Criminal~~
5 ~~Code of 2012 unless:~~

6 ~~(1) an electronic recording is made of the custodial~~
7 ~~interrogation; and~~

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

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

19 (1) an electronic recording is made of the custodial
20 interrogation; and

21 (2) the recording is substantially accurate and not
22 intentionally altered.

23 (b-5) (Blank). ~~Under the following circumstances, an oral,~~
24 ~~written, or sign language statement of an accused made as a~~
25 ~~result of a custodial interrogation conducted at a police~~
26 ~~station or other place of detention shall be presumed to be~~

1 ~~inadmissible as evidence against the accused, unless an~~
2 ~~electronic recording is made of the custodial interrogation~~
3 ~~and the recording is substantially accurate and not~~
4 ~~intentionally altered:~~

5 ~~(1) in any criminal proceeding brought under Section~~
6 ~~11 1.40 or 20 1.1 of the Criminal Code of 1961 or the~~
7 ~~Criminal Code of 2012, if the custodial interrogation was~~
8 ~~conducted on or after June 1, 2014;~~

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

13 ~~(3) in any criminal proceeding brought under Section~~
14 ~~11 1.30 or 18 2 or subsection (c) of Section 12 3.05 of~~
15 ~~the Criminal Code of 1961 or the Criminal Code of 2012, if~~
16 ~~the custodial interrogation was conducted on or after June~~
17 ~~1, 2016.~~

18 (b-10) (Blank). ~~If, during the course of an electronically~~
19 ~~recorded custodial interrogation conducted under this Section,~~
20 ~~the accused makes a statement that creates a reasonable~~
21 ~~suspicion to believe the accused has committed an offense~~
22 ~~other than an offense required to be recorded under subsection~~
23 ~~(b) or (b-5), the interrogators may, without the accused's~~
24 ~~consent, continue to record the interrogation as it relates to~~
25 ~~the other offense notwithstanding any provision of law to the~~
26 ~~contrary. Any oral, written, or sign language statement of an~~

1 ~~accused made as a result of an interrogation under this~~
2 ~~subsection shall be presumed to be inadmissible as evidence~~
3 ~~against the accused in any criminal proceeding, unless the~~
4 ~~recording is substantially accurate and not intentionally~~
5 ~~altered.~~

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

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

19 (e) Nothing in this Section precludes the admission (i) of
20 a statement made by the accused in open court at his or her
21 trial, before a grand jury, or at a preliminary hearing, (ii)
22 of a statement made during a custodial interrogation that was
23 not recorded as required by this Section, because electronic
24 recording was not feasible, (iii) of a voluntary statement,
25 whether or not the result of a custodial interrogation, that
26 has a bearing on the credibility of the accused as a witness,

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

26 (f) The presumption of inadmissibility of a statement made

1 by a suspect at a custodial interrogation at a police station
2 or other place of detention may be overcome by a preponderance
3 of the evidence that the statement was voluntarily given and
4 is reliable, based on the totality of the circumstances.

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

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