



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4104

Introduced 9/3/2021, by Rep. Curtis J. Tarver, II

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-401.6
725 ILCS 5/103-2.2

Amends the Juvenile Court Act of 1987 and the Code of Criminal Procedure of 1963 if and only if Senate Bill 2122 of the 102nd General Assembly becomes law in the form in which it passed both houses on May 30, 2021. In provisions concerning deceptive tactics, expands protections against certain deceptive tactics during custodial interrogation to include persons with intellectual and developmental disabilities (currently, only minors are protected).

LRB102 18872 KMF 27596 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. If and only if Senate Bill 2122 of the 102nd
5 General Assembly becomes law in the form in which it passed
6 both houses on May 30, 2021, then the Juvenile Court Act of
7 1987 is amended by changing Section 5-401.6 as follows:

8 (705 ILCS 405/5-401.6)

9 Sec. 5-401.6. Prohibition of deceptive tactics.

10 (a) In this Section:

11 "Custodial interrogation" means any interrogation (i)
12 during which a reasonable person in the subject's position
13 would consider himself or herself to be in custody and (ii)
14 during which a question is asked that is reasonably likely to
15 elicit an incriminating response.

16 "Deception" means the knowing communication of false facts
17 about evidence or unauthorized statements regarding leniency
18 by a law enforcement officer or juvenile officer to a subject
19 of custodial interrogation.

20 "Place of detention" means a building or a police station
21 that is a place of operation for a municipal police department
22 or county sheriff department or other law enforcement agency
23 at which persons are or may be held in detention in connection

1 with criminal charges against those persons or allegations
2 that those persons are delinquent minors.

3 "Protected person" means: a minor who, at the time of the
4 commission of the offense, was under 18 years of age; a person
5 with a moderate, severe, or profound intellectual disability;
6 or a person affected by a developmental disability.

7 (b) An oral, written, or sign language confession of a
8 protected person ~~minor, who at the time of the commission of~~
9 ~~the offense was under 18 years of age,~~ made as a result of a
10 custodial interrogation conducted at a police station or other
11 place of detention on or after the effective date of this
12 amendatory Act of the 102nd General Assembly shall be presumed
13 to be inadmissible as evidence against the protected person
14 ~~minor~~ making the confession in a criminal proceeding or a
15 juvenile court proceeding for an act that if committed by an
16 adult would be a misdemeanor offense under Article 11 of the
17 Criminal Code of 2012 or a felony offense under the Criminal
18 Code of 2012 if, during the custodial interrogation, a law
19 enforcement officer or juvenile officer knowingly engages in
20 deception.

21 (c) The presumption of inadmissibility of a confession of
22 a protected person ~~minor, who at the time of the commission of~~
23 ~~the offense was under 18 years of age,~~ at a custodial
24 interrogation at a police station or other place of detention,
25 when such confession is procured through the knowing use of
26 deception, may be overcome by a preponderance of the evidence

1 that the confession was voluntarily given, based on the
2 totality of the circumstances.

3 (d) The burden of going forward with the evidence and the
4 burden of proving that a confession was voluntary shall be on
5 the State. Objection to the failure of the State to call all
6 material witnesses on the issue of whether the confession was
7 voluntary must be made in the trial court.

8 (Source: 10200SB2122enr.)

9 Section 10. If and only if Senate Bill 2122 of the 102nd
10 General Assembly becomes law in the form in which it passed
11 both houses on May 30, 2021, then the Code of Criminal
12 Procedure of 1963 is amended by changing Section 103-2.2 as
13 follows:

14 (725 ILCS 5/103-2.2)

15 Sec. 103-2.2. Prohibition of deceptive tactics.

16 (a) In this Section:

17 "Custodial interrogation" means any interrogation during
18 which (i) a reasonable person in the subject's position would
19 consider himself or herself to be in custody and (ii) during
20 which a question is asked that is reasonably likely to elicit
21 an incriminating response.

22 "Deception" means the knowing communication of false facts
23 about evidence or unauthorized statements regarding leniency
24 by a law enforcement officer or juvenile officer to a subject

1 of custodial interrogation.

2 "Place of detention" means a building or a police station
3 that is a place of operation for a municipal police department
4 or county sheriff department or other law enforcement agency,
5 not a courthouse, that is owned or operated by a law
6 enforcement agency at which persons are or may be held in
7 detention in connection with criminal charges against those
8 persons.

9 "Protected person" means: a minor who, at the time of the
10 commission of the offense, was under 18 years of age; a person
11 with a moderate, severe, or profound intellectual disability;
12 or a person affected by a developmental disability.

13 (b) An oral, written, or sign language confession of a
14 protected person ~~minor, who at the time of the commission of~~
15 ~~the offense was under 18 years of age,~~ made as a result of a
16 custodial interrogation conducted at a police station or other
17 place of detention on or after the effective date of this
18 amendatory Act of the 102nd General Assembly shall be presumed
19 to be inadmissible as evidence against the protected person
20 ~~minor~~ making the confession 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 if, during the custodial interrogation, a law
25 enforcement officer or juvenile officer knowingly engages in
26 deception.

1 (c) The presumption of inadmissibility of a confession of
2 a protected person ~~minor, who at the time of the commission of~~
3 ~~the offense was under 18 years of age,~~ at a custodial
4 interrogation at a police station or other place of detention,
5 when such confession is procured through the knowing use of
6 deception, may be overcome by a preponderance of the evidence
7 that the confession was voluntarily given, based on the
8 totality of the circumstances.

9 (d) The burden of going forward with the evidence and the
10 burden of proving that a confession was voluntary shall be on
11 the State. Objection to the failure of the State to call all
12 material witnesses on the issue of whether the confession was
13 voluntary must be made in the trial court.

14 (Source: 10200SB2122enr.)