



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3321

Introduced 2/7/2024, by Sen. Robert Peters

SYNOPSIS AS INTRODUCED:

55 ILCS 5/3-4006 from Ch. 34, par. 3-4006
705 ILCS 405/5-170
705 ILCS 405/5-401.5

Amends the Juvenile Court Act of 1987. Provides that in a proceeding under the Delinquent Minors Article of the Act, a minor who was under 18 (rather than under 15) years of age at the time of the commission of an act that if committed by an adult would be a violation of any offense under the Criminal Code of 1961 or the Criminal Code of 2012 (rather than a homicide offense or criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual abuse, or aggravated criminal sexual abuse) must be represented by counsel throughout the entire custodial interrogation of the minor. Provides that in custodial interrogations, a minor may not waive the right to the assistance of counsel. Provides that an oral, written, or sign language statement of a minor, who at the time of the commission of the offense was under 18 years of age, is presumed to be inadmissible when the statement is obtained from the minor while the minor is subject to custodial interrogation by a law enforcement officer, State's Attorney, juvenile officer, or other public official or employee prior to the officer, State's Attorney, public official, or employee ensuring that the minor is represented by counsel throughout the custodial interrogation. Provides that an oral, written, or sign language statement of a minor made without counsel present throughout the entire custodial interrogation of the minor shall be inadmissible as evidence against the minor in any juvenile court proceeding or criminal proceeding. Deletes provision that the presumption of inadmissibility of a statement made by a suspect at a custodial interrogation at a police station or other place of detention 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. Amends the Counties Code to make conforming changes.

LRB103 36293 RLC 69381 b

1 AN ACT concerning courts.

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

4 Section 5. The Counties Code is amended by changing
5 Section 3-4006 as follows:

6 (55 ILCS 5/3-4006) (from Ch. 34, par. 3-4006)

7 Sec. 3-4006. Duties of public defender. The Public
8 Defender, as directed by the court, shall act as attorney,
9 without fee, before any court within any county for all
10 persons who are held in custody or who are charged with the
11 commission of any criminal offense, and who the court finds
12 are unable to employ counsel.

13 The Public Defender shall be the attorney, without fee,
14 when so appointed by the court under Section 1-5 of the
15 Juvenile Court Act of 1987.

16 In cases subject to Section 5-170 of the Juvenile Court
17 Act of 1987 or subsection (a-5) of Section 103-2.1 of the Code
18 of Criminal Procedure of 1963 involving a minor who was under
19 18 ~~15~~ years of age at the time of the commission of the
20 offense, that occurs in a county with a full-time public
21 defender office, a public defender, without fee or
22 appointment, may represent and have access to a minor during a
23 custodial interrogation. In cases subject to Section 5-170 of

1 the Juvenile Court Act of 1987 or subsection (a-5) of Section
2 103-2.1 of the Code of Criminal Procedure of 1963 involving a
3 minor who was under 18 ~~15~~ years of age at the time of the
4 commission of the offense, that occurs in a county without a
5 full-time public defender, the law enforcement agency
6 conducting the custodial interrogation shall ensure that the
7 minor is able to consult with an attorney who is under contract
8 with the county to provide public defender services.
9 Representation by the public defender shall terminate at the
10 first court appearance if the court determines that the minor
11 is not indigent.

12 Every court shall, with the consent of the defendant and
13 where the court finds that the rights of the defendant would be
14 prejudiced by the appointment of the public defender, appoint
15 counsel other than the public defender, except as otherwise
16 provided in Section 113-3 of the "Code of Criminal Procedure
17 of 1963". That counsel shall be compensated as is provided by
18 law. He shall also, in the case of the conviction of any such
19 person, prosecute any proceeding in review which in his
20 judgment the interests of justice require.

21 In counties with a population over 3,000,000, the public
22 defender, without fee or appointment and with the concurrence
23 of the county board, may act as attorney to noncitizens in
24 immigration cases. Representation by the public defender in
25 immigration cases shall be limited to those arising in
26 immigration courts located within the geographical boundaries

1 of the county where the public defender has been appointed to
2 office unless the board authorizes the public defender to
3 provide representation outside the county.

4 (Source: P.A. 102-410, eff. 1-1-22; 102-1117, eff. 1-13-23.)

5 Section 10. The Juvenile Court Act of 1987 is amended by
6 changing Sections 5-170 and 5-401.5 as follows:

7 (705 ILCS 405/5-170)

8 Sec. 5-170. Representation by counsel.

9 (a) In a proceeding under this Article, a minor who was
10 under 18 ~~15~~ years of age at the time of the commission of an
11 act that if committed by an adult would be a violation of any
12 offense ~~Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, 9-3.3,~~
13 ~~11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14,~~
14 ~~12-14.1, 12-15, or 12-16~~ of the Criminal Code of 1961 or the
15 Criminal Code of 2012 must be represented by counsel
16 throughout the entire custodial interrogation of the minor. In
17 custodial interrogations, a minor may not waive the right to
18 the assistance of counsel.

19 (b) In a judicial proceeding under this Article, a minor
20 may not waive the right to the assistance of counsel in the
21 minor's defense.

22 (Source: P.A. 103-22, eff. 8-8-23.)

23 (705 ILCS 405/5-401.5)

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

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

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

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

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) ensuring that the minor is represented by counsel
25 throughout the custodial interrogation;

26 (2) ~~(1)~~ continuously reading ~~reads~~ to the minor, in

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

10 (3) ~~(2)~~ after reading the statement required by
11 paragraphs ~~paragraph~~ (1) and (2) of this subsection (a-5),
12 the public official or employee shall ask the minor the
13 following questions and wait for the minor's response to
14 each question:

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

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

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

1 unless:

2 (1) an electronic recording is made of the custodial
3 interrogation; and

4 (2) the recording is substantially accurate and not
5 intentionally altered.

6 (b-5) (Blank).

7 (b-10) If, during the course of an electronically recorded
8 custodial interrogation conducted under this Section of a
9 minor who, at the time of the commission of the offense was
10 under the age of 18 years, the minor makes a statement that
11 creates a reasonable suspicion to believe the minor has
12 committed an act that if committed by an adult would be an
13 offense other than an offense required to be recorded under
14 subsection (b), the interrogators may, without the minor's
15 consent, continue to record the interrogation as it relates to
16 the other offense notwithstanding any provision of law to the
17 contrary. Any oral, written, or sign language statement of a
18 minor made as a result of an interrogation under this
19 subsection shall be presumed to be inadmissible as evidence
20 against the minor in any criminal proceeding or juvenile court
21 proceeding, unless the recording is substantially accurate and
22 not intentionally altered.

23 (c) Every electronic recording made under this Section
24 must be preserved until such time as the minor's adjudication
25 for any offense relating to the statement is final and all
26 direct and habeas corpus appeals are exhausted, or the

1 prosecution of such offenses is barred by law.

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

10 (d-5) An oral, written, or sign language statement of a
11 minor made without counsel present throughout the entire
12 custodial interrogation of the minor shall be inadmissible as
13 evidence against the minor in any juvenile court proceeding or
14 criminal proceeding.

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

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

18 (f) (Blank). ~~The presumption of inadmissibility of a~~
19 ~~statement made by a suspect at a custodial interrogation at a~~
20 ~~police station or other place of detention may be overcome by a~~
21 ~~preponderance of the evidence that the statement was~~
22 ~~voluntarily given and is reliable, based on the totality of~~
23 ~~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. 103-22, eff. 8-8-23.)