

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 (This Section may contain text from a Public Act with a
8 delayed effective date)

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

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

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

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

24 (b) An oral, written, or sign language statement of a minor
25 who, at the time of the commission of the offense was under the
26 age of 17 years, made as a result of a custodial interrogation
27 conducted at a police station or other place of detention on or
28 after the effective date of this amendatory Act of the 93rd
29 General Assembly shall be presumed to be inadmissible as
30 evidence against the minor in any criminal proceeding or
31 juvenile court proceeding, for an act that if committed by an
32 adult would be brought under Section 9-1, 9-1.2, 9-2, 9-2.1,

1 9-3, 9-3.2, or 9-3.3, of the Criminal Code of 1961 or under
2 clause (d)(1)(F) of Section 11-501 of the Illinois Vehicle Code
3 unless:

4 (1) an electronic recording is made of the custodial
5 interrogation; and

6 (2) the recording is substantially accurate and not
7 intentionally altered.

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

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

21 (e) Nothing in this Section precludes the admission (i) of
22 a statement made by the minor in open court in any criminal
23 proceeding or juvenile court proceeding, before a grand jury,
24 or at a preliminary hearing, (ii) of a statement made during a
25 custodial interrogation that was not recorded as required by
26 this Section because electronic recording was not feasible,
27 (iii) of a voluntary statement, whether or not the result of a
28 custodial interrogation, that has a bearing on the credibility
29 of the accused as a witness, (iv) of a spontaneous statement
30 that is not made in response to a question, (v) of a statement
31 made after questioning that is routinely asked during the
32 processing of the arrest of the suspect, (vi) of a statement
33 made during a custodial interrogation by a suspect who
34 requests, prior to making the statement, to respond to the
35 interrogator's questions only if an electronic recording is not
36 made of the statement, provided that an electronic recording is

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

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

18 (g) Any electronic recording of any statement made by a
19 minor during a custodial interrogation that is compiled by any
20 law enforcement agency as required by this Section for the
21 purposes of fulfilling the requirements of this Section shall
22 be confidential and exempt from public inspection and copying,
23 as provided under Section 7 of the Freedom of Information Act,
24 and the information shall not be transmitted to anyone except
25 as needed to comply with this Section.

26 (Source: P.A. 93-206, eff. 7-18-05; 93-517, eff. 8-6-05.)

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

29 (725 ILCS 5/103-2.1)

30 (This Section may contain text from a Public Act with a
31 delayed effective date)

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

33 (a) In this Section, "custodial interrogation" means any
34 interrogation during which (i) a reasonable person in the

1 subject's position would consider himself or herself to be in
2 custody and (ii) during which a question is asked that is
3 reasonably likely to elicit an incriminating response.

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

11 In this Section, "electronic recording" includes motion
12 picture, audiotape, or videotape, or digital recording.

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

21 (1) an electronic recording is made of the custodial
22 interrogation; and

23 (2) the recording is substantially accurate and not
24 intentionally altered.

25 (c) Every electronic recording required under this Section
26 must be preserved until such time as the defendant's conviction
27 for any offense relating to the statement is final and all
28 direct and habeas corpus appeals are exhausted, or the
29 prosecution of such offenses is barred by law.

30 (d) If the court finds, by a preponderance of the evidence,
31 that the defendant was subjected to a custodial interrogation
32 in violation of this Section, then any statements made by the
33 defendant during or following that non-recorded custodial
34 interrogation, even if otherwise in compliance with this
35 Section, are presumed to be inadmissible in any criminal
36 proceeding against the defendant except for the purposes of

1 impeachment.

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

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

35 (g) Any electronic recording of any statement made by an
36 accused during a custodial interrogation that is compiled by

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

7 (Source: P.A. 93-206, eff. 7-18-05; 93-517, eff. 8-6-05.)

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.