

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.