



Rep. Arthur Turner

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09700HB5262ham001

LRB097 18645 RLC 68069 a

1 AMENDMENT TO HOUSE BILL 5262

2 AMENDMENT NO. _____. Amend House Bill 5262 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Criminal Procedure of 1963 is
5 amended by changing Section 103-2.1 as follows:

6 (725 ILCS 5/103-2.1)

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

8 (a) In this Section, "custodial interrogation" means any
9 interrogation during which (i) 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, "place of detention" means a building or a
14 police station that is a place of operation for a municipal
15 police department or county sheriff department or other law
16 enforcement agency, not a courthouse, that is owned or operated

1 by a law enforcement agency at which persons are or may be held
2 in detention in connection with criminal charges against those
3 persons.

4 In this Section, "electronic recording" includes motion
5 picture, audiotape, or videotape, or digital recording.

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

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

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

18 (b-5) Recordings may be made of statements of an accused
19 regarding offenses other than those listed in subsection (b)
20 and those recordings are an exception to the offense of
21 eavesdropping as defined in Article 14 of the Criminal Code of
22 1961.

23 (c) Every electronic recording required under this Section
24 must be preserved until such time as the defendant's conviction
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 evidence,
3 that the defendant was subjected to a custodial interrogation
4 in violation of this Section, then any statements made by the
5 defendant during or following that non-recorded custodial
6 interrogation, even if otherwise in compliance with this
7 Section, are presumed to be inadmissible in any criminal
8 proceeding against the defendant except for the purposes of
9 impeachment.

10 (e) Nothing in this Section precludes the admission (i) of
11 a statement made by the accused in open court at his or her
12 trial, before a grand jury, or at a preliminary hearing, (ii)
13 of a statement made during a custodial interrogation that was
14 not recorded as required by this Section, because electronic
15 recording was not feasible, (iii) of a voluntary statement,
16 whether or not the result of a custodial interrogation, that
17 has a bearing on the credibility of the accused as a witness,
18 (iv) of a spontaneous statement that is not made in response to
19 a question, (v) of a statement made after questioning that is
20 routinely asked during the processing of the arrest of the
21 suspect, (vi) of a statement made during a custodial
22 interrogation by a suspect who requests, prior to making the
23 statement, to respond to the interrogator's questions only if
24 an electronic recording is not made of the statement, provided
25 that an electronic recording is made of the statement of
26 agreeing to respond to the interrogator's question, only if a

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

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

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

25 (Source: P.A. 93-206, eff. 7-18-05; 93-517, eff. 8-6-05;
26 94-117, eff. 7-5-05.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.".