



Sen. Kwame Raoul

Filed: 3/26/2012

09700SB2776sam001

LRB097 16188 RLC 67956 a

1 AMENDMENT TO SENATE BILL 2776

2 AMENDMENT NO. _____. Amend Senate Bill 2776 by replacing
3 everything after the enacting clause with the following:

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

8 (a) In this Section, "custodial interrogation" means any
9 interrogation (i) during which 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, "electronic recording" includes motion
14 picture, audiotape, videotape, or digital recording.

15 In this Section, "place of detention" means a building or a
16 police station that is a place of operation for a municipal

1 police department or county sheriff department or other law
2 enforcement agency at which persons are or may be held in
3 detention in connection with criminal charges against those
4 persons or allegations that those persons are delinquent
5 minors.

6 (b) An oral, written, or sign language statement of a minor
7 who, at the time of the commission of the offense was under the
8 age of 17 years, made as a result of a custodial interrogation
9 conducted at a police station or other place of detention on or
10 after the effective date of this amendatory Act of the 93rd
11 General Assembly shall be presumed to be inadmissible as
12 evidence against the minor in any criminal proceeding or
13 juvenile court proceeding, for an act that if committed by an
14 adult could be charged as a Class 1 felony, Class X felony, or
15 first degree murder under the Criminal Code of 1961 ~~would be~~
16 ~~brought under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or~~
17 ~~9-3.3, of the Criminal Code of 1961 or under clause (d)(1)(F)~~
18 ~~of Section 11-501 of the Illinois Vehicle Code unless:~~

19 (1) an electronic recording is made of the custodial
20 interrogation; and

21 (2) the recording is substantially accurate and not
22 intentionally altered.

23 (c) Every electronic recording required 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 evidence,
3 that the minor was subjected to a custodial interrogation in
4 violation of this Section, then any statements made by the
5 minor 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 or juvenile court proceeding against the minor
9 except for the purposes of impeachment.

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

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

1 instant offense, as part of any behavioral health screening,
2 assessment, evaluation, or treatment, whether or not
3 court-ordered, shall not be admissible as evidence against the
4 minor on the issue of guilt only in the instant juvenile court
5 proceeding. The provisions of this subsection (h) are in
6 addition to and do not override any existing statutory and
7 constitutional prohibition on the admission into evidence in
8 delinquency proceedings of information obtained during
9 screening, assessment, or treatment.

10 (Source: P.A. 96-1251, eff. 1-1-11.)

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

13 (725 ILCS 5/103-2.1)

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

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

20 In this Section, "place of detention" means a building or a
21 police station that is a place of operation for a municipal
22 police department or county sheriff department or other law
23 enforcement agency, not a courthouse, that is owned or operated
24 by a law enforcement agency at which persons are or may be held

1 in detention in connection with criminal charges against those
2 persons.

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

5 (b) An oral, written, or sign language statement of an
6 accused made as a result of a custodial interrogation at a
7 police station or other place of detention shall be presumed to
8 be inadmissible as evidence against the accused in any criminal
9 proceeding in which the accused is charged with the commission
10 of an offense that is a Class 1 felony, Class X felony, or
11 first degree murder under the Criminal Code of 1961 ~~brought~~
12 ~~under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3 of~~
13 ~~the Criminal Code of 1961 or under clause (d) (1) (F) of Section~~
14 ~~11-501 of the Illinois Vehicle Code unless:~~

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

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

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

24 (d) If the court finds, by a preponderance of the evidence,
25 that the defendant was subjected to a custodial interrogation
26 in violation of this Section, then any statements made by the

1 defendant during or following that non-recorded custodial
2 interrogation, even if otherwise in compliance with this
3 Section, are presumed to be inadmissible in any criminal
4 proceeding against the defendant except for the purposes of
5 impeachment.

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

1 ~~occurred~~, or (ix) of any other statement that may be admissible
2 under law. The State shall bear the burden of proving, by a
3 preponderance of the evidence, that one of the exceptions
4 described in this subsection (e) is applicable. Nothing in this
5 Section precludes the admission of a statement, otherwise
6 inadmissible under this Section, that is used only for
7 impeachment and not as substantive evidence.

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

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

21 (Source: P.A. 93-206, eff. 7-18-05; 93-517, eff. 8-6-05;
22 94-117, eff. 7-5-05.)".