



Sen. Kwame Raoul

Filed: 3/26/2012

09700SB2776sam002

LRB097 16188 RLC 68009 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 In this Section, "violent crime" means any act that if
7 committed by an adult would be a felony offense defined in
8 subsection (c) of Section 3 of the Rights of Crime Victims and
9 Witnesses Act.

10 (b) An oral, written, or sign language statement of a minor
11 who, at the time of the commission of the offense was under the
12 age of 17 years, made as a result of a custodial interrogation
13 conducted at a police station or other place of detention on or
14 after the effective date of this amendatory Act of the 93rd
15 General Assembly shall be presumed to be inadmissible as
16 evidence against the minor in any criminal proceeding or
17 juvenile court proceeding, for an act that if committed by an
18 adult would be a violent crime ~~brought under Section 9-1,~~
19 ~~9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3, of the Criminal Code~~
20 ~~of 1961 or under clause (d)(1)(F) of Section 11-501 of the~~
21 ~~Illinois Vehicle Code~~ unless:

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

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

26 (c) Every electronic recording required under this Section

1 must be preserved until such time as the minor's adjudication
2 for any offense relating to the statement is final and all
3 direct and habeas corpus appeals are exhausted, or the
4 prosecution of such offenses is barred by law.

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

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

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

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

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

1 as needed to comply with this Section.

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

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

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

16 (725 ILCS 5/103-2.1)

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

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

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

1 police department or county sheriff department or other law
2 enforcement agency, not a courthouse, that is owned or operated
3 by a law enforcement agency at which persons are or may be held
4 in detention in connection with criminal charges against those
5 persons.

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

8 In this Section, "violent crime" means any felony offense
9 defined in subsection (c) of Section 3 of the Rights of Crime
10 Victims and Witnesses Act.

11 (b) An oral, written, or sign language statement of an
12 accused made as a result of a custodial interrogation at a
13 police station or other place of detention shall be presumed to
14 be inadmissible as evidence against the accused in any criminal
15 proceeding for any violent crime ~~brought under Section 9-1,~~
16 ~~9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of~~
17 ~~1961 or under clause (d)(1)(F) of Section 11-501 of the~~
18 ~~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 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) (blank) ~~of a statement given at a time~~
4 ~~when the interrogators are unaware that a death has in fact~~
5 ~~occurred~~, or (ix) of any other statement that may be admissible
6 under law. The State shall bear the burden of proving, by a
7 preponderance of the evidence, that one of the exceptions
8 described in this subsection (e) is applicable. Nothing in this
9 Section precludes the admission of a statement, otherwise
10 inadmissible under this Section, that is used only for
11 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 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.)".