

# SB3350



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB3350

Introduced 2/7/2012, by Sen. Kwame Raoul

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/103-2.1

Amends the Code of Criminal Procedure of 1963. Makes a technical change in a Section concerning the admissibility in certain criminal proceedings of statements made by an accused during a custodial interrogation at a police station or other place of detention.

LRB097 18565 RLC 63797 b

A BILL FOR

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 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 ~~this~~ Section, "custodial interrogation" means  
9 any 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  
17 by a law enforcement agency at which persons are or may be held  
18 in detention in connection with criminal charges against those  
19 persons.

20 In this Section, "electronic recording" includes motion  
21 picture, audiotape, or videotape, or digital recording.

22 (b) An oral, written, or sign language statement of an  
23 accused made as a result of a custodial interrogation at a

1 police station or other place of detention shall be presumed to  
2 be inadmissible as evidence against the accused in any criminal  
3 proceeding brought under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3,  
4 9-3.2, or 9-3.3 of the Criminal Code of 1961 or under clause  
5 (d)(1)(F) of Section 11-501 of the Illinois Vehicle Code  
6 unless:

7 (1) an electronic recording is made of the custodial  
8 interrogation; and

9 (2) the recording is substantially accurate and not  
10 intentionally altered.

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

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

24 (e) Nothing in this Section precludes the admission (i) of  
25 a statement made by the accused in open court at his or her  
26 trial, before a grand jury, or at a preliminary hearing, (ii)

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

26 (f) The presumption of inadmissibility of a statement made

1 by a suspect at a custodial interrogation at a police station  
2 or other place of detention may be overcome by a preponderance  
3 of the evidence that the statement was voluntarily given and is  
4 reliable, based on the totality of the circumstances.

5 (g) Any electronic recording of any statement made by an  
6 accused during a custodial interrogation that is compiled by  
7 any law enforcement agency as required by this Section for the  
8 purposes of fulfilling the requirements of this Section shall  
9 be confidential and exempt from public inspection and copying,  
10 as provided under Section 7 of the Freedom of Information Act,  
11 and the information shall not be transmitted to anyone except  
12 as needed to comply with this Section.

13 (Source: P.A. 93-206, eff. 7-18-05; 93-517, eff. 8-6-05;  
14 94-117, eff. 7-5-05.)