



Rep. Scott Drury

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09800HB2945ham001

LRB098 09205 MRW 44452 a

1 AMENDMENT TO HOUSE BILL 2945

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2945 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, "minor" means an individual who at the  
16 time of the commission of the offense was under the age of 18

1 years.

2 In this Section, "place of detention" means a building or a  
3 police station that is a place of operation for a municipal  
4 police department or county sheriff department or other law  
5 enforcement agency at which persons are or may be held in  
6 detention in connection with criminal charges against those  
7 persons or allegations that those persons are delinquent  
8 minors.

9 (a-5) On or after the effective date of this amendatory Act  
10 of the 98th General Assembly, an electronic recording of a  
11 minor shall be made of all custodial interrogations conducted  
12 at a police station or other place of detention, where the  
13 offense if committed by an adult:

14 (1) could be charged under Section 9-1, 9-1.2, 9-2,  
15 9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961 or  
16 the Criminal Code of 2012, or under clause (d)(1)(F) of  
17 Section 11-501 of the Illinois Vehicle Code; or

18 (2) could be charged as a Class 1 or Class X felony.

19 (b) For an act that if committed by an adult would be  
20 brought under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or  
21 9-3.3 of the Criminal Code of 1961 or the Criminal Code of  
22 2012, or under clause (d)(1)(F) of Section 11-501 of the  
23 Illinois Vehicle Code, an ~~An~~ oral, written, or sign language  
24 statement of a minor ~~who, at the time of the commission of the~~  
25 ~~offense was under the age of 17 years,~~ made as a result of a  
26 custodial interrogation conducted at a police station or other

1 place of detention on or after July 18, 2005 ~~the effective date~~  
2 ~~of this amendatory Act of the 93rd General Assembly~~ shall be  
3 presumed to be inadmissible as evidence against the minor in  
4 any criminal proceeding or juvenile court proceeding, ~~for an~~  
5 ~~act that if committed by an adult would be brought under~~  
6 ~~Section 9 1, 9 1.2, 9 2, 9 2.1, 9 3, 9 3.2, or 9 3.3, of the~~  
7 ~~Criminal Code of 1961 or the Criminal Code of 2012, or under~~  
8 ~~clause (d) (1) (F) of Section 11 501 of the Illinois Vehicle Code~~  
9 unless:

10 (1) an electronic recording is made of the custodial  
11 interrogation; and

12 (2) the electronic recording is substantially accurate  
13 and not intentionally altered.

14 (c) (Blank). ~~Every electronic recording required under~~  
15 ~~this Section must be preserved until such time as the minor's~~  
16 ~~adjudication for any offense relating to the statement is final~~  
17 ~~and all direct and habeas corpus appeals are exhausted, or the~~  
18 ~~prosecution of such offenses is barred by law.~~

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

1       (d-1) The presumption of inadmissibility set forth in  
2 subsections (b) and (d) may be overcome by a preponderance of  
3 the evidence that the statement was voluntarily given and is  
4 reliable, based on the totality of the circumstances.

5       (d-2) A court shall consider compliance or noncompliance  
6 with the requirements of this Section in adjudicating a motion  
7 to suppress or any other motion to bar any statement for which  
8 an electronic recording was required to have been made under  
9 this Section.

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) of a  
4 statement given at a time when the interrogators are unaware  
5 that a death has in fact occurred, or the offense if committed  
6 by an adult could be charged as a Class 1 or Class X felony, or  
7 (ix) of any other statement that may be admissible under law.  
8 The State shall bear the burden of proving, by a preponderance  
9 of the evidence, that one of the exceptions described in this  
10 subsection (e) is applicable. Nothing in this Section precludes  
11 the admission of a statement, otherwise inadmissible under this  
12 Section, that is used only for impeachment and not as  
13 substantive evidence.

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

20 (f-1) Unless it has been established by a preponderance of  
21 the evidence that an exception listed in subsection (e) is  
22 applicable, if an unrecorded statement or an electronically  
23 recorded custodial interrogation that is not substantially  
24 accurate or has been intentionally altered is introduced into  
25 evidence where the statement was required to be electronically  
26 recorded under subsection (a-5), the court shall, upon the

1 request of the defendant, provide the jury with cautionary  
2 instructions, which at a minimum shall include the following,  
3 with changes that are necessary for consistency with the  
4 evidence:

5 "The interview of the defendant by law enforcement  
6 officials which took place on (insert date) at (insert  
7 location) was not electronically recorded as required by  
8 our law. Because the interview was not electronically  
9 recorded, you have not been provided the most reliable  
10 evidence as to what was said and done by the participants.  
11 You were not able to hear the exact words used by the  
12 participants or the tone or inflection of their voices (nor  
13 were you able to see the actual interactions between the  
14 defendant and law enforcement officials).

15 Accordingly, as you go about determining what occurred  
16 during the interview, you should give special attention to  
17 whether you are satisfied that what was said and done has  
18 been accurately reported by the participants, including  
19 testimony as to statements attributed by law enforcement  
20 witnesses to the defendant."

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

26 (g-1) Any electronic recording of any statement made by a

1 minor during a custodial interrogation that is compiled by any  
2 law enforcement agency as required by this Section for the  
3 purposes of fulfilling the requirements of this Section shall  
4 be confidential and exempt from public inspection and copying,  
5 as provided under Section 7 of the Freedom of Information Act,  
6 and the information shall not be transmitted to anyone except  
7 as needed to comply with this Section.

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

19 (Source: P.A. 96-1251, eff. 1-1-11; 97-1150, eff. 1-25-13.)

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

22 (725 ILCS 5/103-2.1)

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

24 (a) In this Section, "custodial interrogation" means any

1 interrogation during which (i) a reasonable person in the  
2 subject's position would consider himself or herself to be in  
3 custody and (ii) during which a question is asked that is  
4 reasonably likely to elicit an incriminating response.

5 In this Section, "place of detention" means a building or a  
6 police station that is a place of operation for a municipal  
7 police department or county sheriff department or other law  
8 enforcement agency, not a courthouse, that is owned or operated  
9 by a law enforcement agency at which persons are or may be held  
10 in detention in connection with criminal charges against those  
11 persons.

12 In this Section, "electronic recording" includes motion  
13 picture, audiotape, or videotape, or digital recording.

14 (a-5) On or after the effective date of this amendatory Act  
15 of the 98th General Assembly, an electronic recording shall be  
16 made of all custodial interrogations conducted at a police  
17 station or other place of detention, where the offense:

18 (1) could be charged under Section 9-1, 9-1.2, 9-2,  
19 9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961 or  
20 the Criminal Code of 2012, or under clause (d)(1)(F) of  
21 Section 11-501 of the Illinois Vehicle Code; or

22 (2) could be charged as a Class 1 or Class X felony.

23 (b) In any criminal proceeding brought under Section 9-1,  
24 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of  
25 1961 or the Criminal Code of 2012, or under clause (d)(1)(F) of  
26 Section 11-501 of the Illinois Vehicle Code, an ~~An~~ oral,



1 written, or sign language statement of an accused made as a  
2 result of a custodial interrogation at a police station or  
3 other place of detention on or after July 18, 2005 shall be  
4 presumed to be inadmissible as evidence against the accused in  
5 any criminal proceeding ~~brought under Section 9-1, 9-1.2, 9-2,~~  
6 ~~9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961 or the~~  
7 ~~Criminal Code of 2012 or under clause (d)(1)(F) of Section~~  
8 ~~11-501 of the Illinois Vehicle Code unless:~~

9 (1) an electronic recording is made of the custodial  
10 interrogation; and

11 (2) the electronic recording is substantially accurate  
12 and not intentionally altered.

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

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

1       (d-1) The presumption of inadmissibility set forth in  
2 subsection (b) or (d) may be overcome by a preponderance of the  
3 evidence that the statement was voluntarily given and is  
4 reliable, based on the totality of the circumstances.

5       (d-2) A court shall consider compliance or noncompliance  
6 with the requirements of this Section in adjudicating a motion  
7 to suppress or any other motion to bar any statement for which  
8 an electronic recording was required to have been made under  
9 this Section.

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  
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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 the offense could be charged as a Class 1 or Class X felony, or  
6 (ix) of any other statement that may be admissible under law.  
7 The State shall bear the burden of proving, by a preponderance  
8 of the evidence, that one of the exceptions described in this  
9 subsection (e) is applicable. Nothing in this Section precludes  
10 the admission of a statement, otherwise inadmissible under this  
11 Section, that is used only for impeachment and not as  
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14 ~~statement made by a suspect at a custodial interrogation at a~~  
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18 ~~circumstances.~~

19 (f-1) Unless it has been established by a preponderance of  
20 the evidence that an exception listed in subsection (e) is  
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23 accurate or has been intentionally altered is introduced into  
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25 recorded under subsection (a-5), the court shall, upon the  
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8 recorded, you have not been provided the most reliable  
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10 You were not able to hear the exact words used by the  
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12 were you able to see the actual interactions between the  
13 defendant and law enforcement officials).

14 Accordingly, as you go about determining what occurred  
15 during the interview, you should give special attention to  
16 whether you are satisfied that what was said and done has  
17 been accurately reported by the participants, including  
18 testimony as to statements attributed by law enforcement  
19 witnesses to the defendant."

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

25 (h) Any electronic recording of any statement made by an  
26 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. 97-1150, eff. 1-25-13.)".