



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

HB2945

by Rep. Scott Drury

#### SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-401.5  
725 ILCS 5/103-2.1

Amends the Juvenile Court Act of 1987 and the Code of Criminal Procedure of 1963. Provides that an oral, written, or sign language statement of a minor or adult made as a result of a custodial interrogation conducted at a police station or other place of detention involving a felony (rather than a homicide or aggravated DUI where the DUI was the proximate cause of death of another person) shall be presumed to be inadmissible as evidence against the minor or adult in any juvenile court or criminal proceeding unless: (1) an electronic recording is made of the custodial interrogation; and (2) the recording is substantially accurate and not intentionally altered.

LRB098 09205 RLC 39344 b

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 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  
17 police department or county sheriff department or other law  
18 enforcement agency at which persons are or may be held in  
19 detention in connection with criminal charges against those  
20 persons or allegations that those persons are delinquent  
21 minors.

22 (b) An oral, written, or sign language statement of a minor  
23 who, at the time of the commission of the offense was under the

1 age of 17 years, made as a result of a custodial interrogation  
2 conducted at a police station or other place of detention on or  
3 after the effective date of this amendatory Act of the 93rd  
4 General Assembly shall be presumed to be inadmissible as  
5 evidence against the minor in any criminal proceeding or  
6 juvenile court proceeding, for an act that if committed by an  
7 adult would be a felony ~~brought under Section 9-1, 9-1.2, 9-2,~~  
8 ~~9-2.1, 9-3, 9-3.2, or 9-3.3, of the Criminal Code of 1961 or~~  
9 ~~the Criminal Code of 2012, or under clause (d)(1)(F) of Section~~  
10 ~~11-501 of the Illinois Vehicle Code unless:~~

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

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

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

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

1 except for the purposes of impeachment.

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

1 applicable. Nothing in this Section precludes the admission of  
2 a statement, otherwise inadmissible under this Section, that is  
3 used only for impeachment and not as substantive evidence.

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

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

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

1 screening, assessment, or treatment.

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

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

5 (725 ILCS 5/103-2.1)

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

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

12 In this Section, "place of detention" means a building or a  
13 police station that is a place of operation for a municipal  
14 police department or county sheriff department or other law  
15 enforcement agency, not a courthouse, that is owned or operated  
16 by a law enforcement agency at which persons are or may be held  
17 in detention in connection with criminal charges against those  
18 persons.

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

21 (b) An oral, written, or sign language statement of an  
22 accused made as a result of a custodial interrogation at a  
23 police station or other place of detention shall be presumed to  
24 be inadmissible as evidence against the accused in any criminal

1 proceeding involving a felony ~~brought under Section 9-1, 9-1.2,~~  
2 ~~9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961~~  
3 ~~or the Criminal Code of 2012 or under clause (d)(1)(F) of~~  
4 ~~Section 11-501 of the Illinois Vehicle Code~~ unless:

5 (1) an electronic recording is made of the custodial  
6 interrogation; and

7 (2) the recording is substantially accurate and not  
8 intentionally altered.

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

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

22 (e) Nothing in this Section precludes the admission (i) of  
23 a statement made by the accused in open court at his or her  
24 trial, before a grand jury, or at a preliminary hearing, (ii)  
25 of a statement made during a custodial interrogation that was  
26 not recorded as required by this Section, because electronic

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

24 (f) The presumption of inadmissibility of a statement made  
25 by a suspect at a custodial interrogation at a police station  
26 or other place of detention may be overcome by a preponderance



1 of the evidence that the statement was voluntarily given and is  
2 reliable, based on the totality of the circumstances.

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

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