

# HB6300



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB6300

Introduced 2/11/2016, by Rep. Elgie R. Sims, Jr.

#### SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-170  
705 ILCS 405/5-401.5

Amends the Juvenile Court of 1987. Provides that a minor who was under 18 at the time of the commission of any offense must be represented by counsel throughout the entire custodial interrogation. An oral, written, or sign language statement of a minor made without counsel present throughout the entire custodial interrogation shall be inadmissible against the minor as evidence in any juvenile court proceeding.

LRB099 18826 SLF 43211 b

FISCAL NOTE ACT  
MAY APPLY

STATE MANDATES  
ACT MAY REQUIRE  
REIMBURSEMENT

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 Juvenile Court Act of 1987 is amended by  
5 changing Sections 5-170 and 5-401.5 as follows:

6 (705 ILCS 405/5-170)

7 Sec. 5-170. Representation by counsel.

8 (a) In a proceeding under this Article, a minor who was  
9 under 18 ~~13~~ years of age at the time of the commission of any  
10 offense ~~an act that if committed by an adult would be a~~  
11 ~~violation of Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, 9-3.3,~~  
12 ~~11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14,~~  
13 ~~12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 or the~~  
14 ~~Criminal Code of 2012~~ must be represented by counsel throughout  
15 ~~during~~ the entire custodial interrogation of the minor.

16 (b) In a judicial proceeding under this Article, a minor  
17 may not waive the right to the assistance of counsel in his or  
18 her defense.

19 (Source: P.A. 96-1551, eff. 7-1-11; 97-1150, eff. 1-25-13.)

20 (705 ILCS 405/5-401.5)

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

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

1 interrogation (i) during which 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, "electronic recording" includes motion  
6 picture, audiotape, videotape, or digital recording.

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

14 (b) An oral, written, or sign language statement of a minor  
15 who, at the time of the commission of the offense was under the  
16 age of 18 years, made as a result of a custodial interrogation  
17 conducted at a police station or other place of detention on or  
18 after the effective date of this amendatory Act of the 93rd  
19 General Assembly shall be presumed to be inadmissible as  
20 evidence against the minor in any criminal proceeding or  
21 juvenile court proceeding, for an act that if committed by an  
22 adult would be brought under Section 9-1, 9-1.2, 9-2, 9-2.1,  
23 9-3, 9-3.2, or 9-3.3, of the Criminal Code of 1961 or the  
24 Criminal Code of 2012, or under clause (d)(1)(F) of Section  
25 11-501 of the Illinois Vehicle Code unless:

26 (1) an electronic recording is made of the custodial

1           interrogation; and

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

4           (b-5) Under the following circumstances, an oral, written,  
5           or sign language statement of a minor who, at the time of the  
6           commission of the offense was under the age of 17 years, made  
7           as a result of a custodial interrogation conducted at a police  
8           station or other place of detention shall be presumed to be  
9           inadmissible as evidence against the minor, unless an  
10          electronic recording is made of the custodial interrogation and  
11          the recording is substantially accurate and not intentionally  
12          altered:

13                   (1) in any criminal proceeding or juvenile court  
14           proceeding, for an act that if committed by an adult would  
15           be brought under Section 11-1.40 or 20-1.1 of the Criminal  
16           Code of 1961 or the Criminal Code of 2012, if the custodial  
17           interrogation was conducted on or after June 1, 2014;

18                   (2) in any criminal proceeding or juvenile court  
19           proceeding, for an act that if committed by an adult would  
20           be brought under Section 10-2, 18-4, or 19-6 of the  
21           Criminal Code of 1961 or the Criminal Code of 2012, if the  
22           custodial interrogation was conducted on or after June 1,  
23           2015; and

24                   (3) in any criminal proceeding or juvenile court  
25           proceeding, for an act that if committed by an adult would  
26           be brought under Section 11-1.30 or 18-2 or subsection (e)

1 of Section 12-3.05 of the Criminal Code of 1961 or the  
2 Criminal Code of 2012, if the custodial interrogation was  
3 conducted on or after June 1, 2016.

4 (b-10) If, during the course of an electronically recorded  
5 custodial interrogation conducted under this Section of a minor  
6 who, at the time of the commission of the offense was under the  
7 age of 17 years, the minor makes a statement that creates a  
8 reasonable suspicion to believe the minor has committed an act  
9 that if committed by an adult would be an offense other than an  
10 offense required to be recorded under subsection (b) or (b-5),  
11 the interrogators may, without the minor's consent, continue to  
12 record the interrogation as it relates to the other offense  
13 notwithstanding any provision of law to the contrary. Any oral,  
14 written, or sign language statement of a minor made as a result  
15 of an interrogation under this subsection shall be presumed to  
16 be inadmissible as evidence against the minor in any criminal  
17 proceeding or juvenile court proceeding, unless the recording  
18 is substantially accurate and not intentionally altered.

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

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

1 minor 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 or juvenile court proceeding against the minor  
5 except for the purposes of impeachment.

6 (d-5) An oral, written, or sign language statement of the  
7 minor made without counsel present throughout the entire  
8 custodial interrogation of the minor shall be inadmissible as  
9 evidence against the minor in any juvenile court proceeding.

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 in violation of subsection (b) at a time when  
5 the interrogators are unaware that a death has in fact  
6 occurred, (ix) of a statement given in violation of subsection  
7 (b-5) at a time when the interrogators are unaware of facts and  
8 circumstances that would create probable cause to believe that  
9 the minor committed an act that if committed by an adult would  
10 be an offense required to be recorded under subsection (b-5),  
11 or (x) of any other statement that may be admissible under law.  
12 The State shall bear the burden of proving, by a preponderance  
13 of the evidence, that one of the exceptions described in this  
14 subsection (e) is applicable. Nothing in this Section precludes  
15 the admission of a statement, otherwise inadmissible under this  
16 Section, that is used only for impeachment and not as  
17 substantive evidence.

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

23 (g) Any electronic recording of any statement made by a  
24 minor during a custodial interrogation that is compiled by any  
25 law enforcement agency as required by this Section for the  
26 purposes of fulfilling the requirements of this Section shall

1 be confidential and exempt from public inspection and copying,  
2 as provided under Section 7 of the Freedom of Information Act,  
3 and the information shall not be transmitted to anyone except  
4 as needed to comply with this Section.

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

16 (i) The changes made to this Section by Public Act 98-61  
17 apply to statements of a minor made on or after January 1, 2014  
18 (the effective date of Public Act 98-61).

19 (Source: P.A. 97-1150, eff. 1-25-13; 98-61, eff. 1-1-14;  
20 98-547, eff. 1-1-14; 98-756, eff. 7-16-14.)