



Sen. Patricia Van Pelt

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LRB099 18370 SLF 48119 a

1 AMENDMENT TO SENATE BILL 2370

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2370, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Counties Code is amended by changing  
6 Section 3-4006 as follows:

7 (55 ILCS 5/3-4006) (from Ch. 34, par. 3-4006)

8 Sec. 3-4006. Duties of public defender. The Public  
9 Defender, as directed by the court, shall act as attorney,  
10 without fee, before any court within any county for all persons  
11 who are held in custody or who are charged with the commission  
12 of any criminal offense, and who the court finds are unable to  
13 employ counsel.

14 The Public Defender shall be the attorney, without fee,  
15 when so appointed by the court under Section 1-20 of the  
16 Juvenile Court Act or Section 1-5 of the Juvenile Court Act of

1 1987 or by any court under Section 5(b) of the Parental Notice  
2 of Abortion Act of 1983 for any party who the court finds is  
3 financially unable to employ counsel.

4 In cases subject to Section 5-170 of the Juvenile Court Act  
5 of 1987 involving a minor who was under 15 years of age at the  
6 time of the commission of the offense, that occurs in a county  
7 with a full-time public defender office, a public defender,  
8 without fee or appointment, may represent and have access to a  
9 minor during a custodial interrogation. In cases subject to  
10 Section 5-170 of the Juvenile Court Act of 1987 involving a  
11 minor who was under 15 years of age at the time of the  
12 commission of the offense, that occurs in a county without a  
13 full-time public defender, the law enforcement agency  
14 conducting the custodial interrogation shall ensure that the  
15 minor is able to consult with an attorney who is under contract  
16 with the county to provide public defender services.  
17 Representation by the public defender shall terminate at the  
18 first court appearance if the court determines that the minor  
19 is not indigent.

20 Every court shall, with the consent of the defendant and  
21 where the court finds that the rights of the defendant would be  
22 prejudiced by the appointment of the public defender, appoint  
23 counsel other than the public defender, except as otherwise  
24 provided in Section 113-3 of the "Code of Criminal Procedure of  
25 1963". That counsel shall be compensated as is provided by law.  
26 He shall also, in the case of the conviction of any such

1 person, prosecute any proceeding in review which in his  
2 judgment the interests of justice require.

3 (Source: P.A. 86-962.)

4 Section 10. 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 15 ~~13~~ years of age at the time of the commission of an act  
10 that if committed by an adult would be a violation of Section  
11 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, 9-3.3, 11-1.20, 11-1.30,  
12 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15, or  
13 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012  
14 must be represented by counsel throughout ~~during~~ the entire  
15 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  
23 interrogation (i) during which a reasonable person in the

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

4 In this Section, "electronic recording" includes motion  
5 picture, audiotape, videotape, or digital recording.

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

13 (a-5) An oral, written, or sign language statement of a  
14 minor, who at the time of the commission of the offense was  
15 under 18 years of age, is presumed to be involuntarily made  
16 when the statement is obtained from the minor while the minor  
17 is subject to custodial interrogation by a law enforcement  
18 officer, State's Attorney, juvenile officer, or other public  
19 official or employee prior to the officer, State's Attorney,  
20 public official, or employee:

21 (1) continuously reads to the minor, in its entirety  
22 and without stopping for purposes of a response from the  
23 minor or verifying comprehension, the following statement:  
24 "You have the right to remain silent. That means you do not  
25 have to say anything. Anything you do say can be used  
26 against you in court. You have the right to get help from a

1       lawyer. If you cannot pay for a lawyer, the court will get  
2       you one for free. You can ask for a lawyer at any time. You  
3       have the right to stop this interview at any time."; and

4       (2) after reading the statement required by paragraph  
5       (1) of this subsection (a-5), the public official or  
6       employee shall ask the minor the following questions and  
7       wait for the minor's response to each question:

8               (A) "Do you want to have a lawyer?"

9               (B) "Do you want to talk to me?"

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 18 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 99th  
15       ~~93rd~~ 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 misdemeanor offense under Article 11 of the  
19       Criminal Code of 2012 or any felony offense brought under  
20       ~~Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3, of the~~  
21       ~~Criminal Code of 1961 or the Criminal Code of 2012, or under~~  
22       ~~clause (d)(1)(F) of Section 11-501 of the Illinois Vehicle Code~~  
23       unless:

24               (1) an electronic recording is made of the custodial  
25       interrogation; and

26               (2) the recording is substantially accurate and not

1 intentionally altered.

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

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

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

22 ~~(3) in any criminal proceeding or juvenile court~~  
23 ~~proceeding, for an act that if committed by an adult would~~  
24 ~~be brought under Section 11-1.30 or 18-2 or subsection (c)~~  
25 ~~of Section 12-3.05 of the Criminal Code of 1961 or the~~  
26 ~~Criminal Code of 2012, if the custodial interrogation was~~

1       ~~conducted on or after June 1, 2016.~~

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

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

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

1 Section, are presumed to be inadmissible in any criminal  
2 proceeding or juvenile court proceeding against the minor  
3 except for the purposes of impeachment.

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



1 ~~subsection (b-5) at a time when the interrogators are unaware~~  
2 ~~of facts and circumstances that would create probable cause to~~  
3 ~~believe that the minor committed an act that if committed by an~~  
4 ~~adult would be an offense required to be recorded under~~  
5 ~~subsection (b-5), or (x) of any other statement that may be~~  
6 admissible under law. The State shall bear the burden of  
7 proving, by a preponderance of the evidence, that one of the  
8 exceptions described in this subsection (e) is applicable.  
9 Nothing in this Section precludes the admission of a statement,  
10 otherwise inadmissible under this Section, that is used only  
11 for 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 a  
18 minor during a custodial interrogation that is compiled by any  
19 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 (h) A statement, admission, confession, or incriminating  
26 information made by or obtained from a minor related to the

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

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

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

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

17 (725 ILCS 5/103-2.1)

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

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

24 In this Section, "place of detention" means a building or a

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

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

9 (a-5) An oral, written, or sign language statement of a  
10 minor, who at the time of the commission of the offense was  
11 under 18 years of age, is presumed to be involuntarily made  
12 when the statement is obtained from the minor while the minor  
13 is subject to custodial interrogation by a law enforcement  
14 officer, State's Attorney, juvenile officer, or other public  
15 official or employee prior to the officer, State's Attorney,  
16 public official, or employee:

17 (1) continuously reads to the minor, in its entirety  
18 and without stopping for purposes of a response from the  
19 minor or verifying comprehension, the following statement:

20 "You have the right to remain silent. That means you do not  
21 have to say anything. Anything you do say can be used  
22 against you in court. You have the right to get help from a  
23 lawyer. If you cannot pay for a lawyer, the court will get  
24 you one for free. You can ask for a lawyer at any time. You  
25 have the right to stop this interview at any time."; and

26 (2) after reading the statement required by paragraph

1       (1) of this subsection (a-5), the public official or  
2       employee shall ask the minor the following questions and  
3       wait for the minor's response to each question:

4               (A) "Do you want to have a lawyer?"

5               (B) "Do you want to talk to me?"

6       (a-10) An oral, written, or sign language statement of a  
7       minor, who at the time of the commission of the offense was  
8       under 18 years of age, made as a result of a custodial  
9       interrogation conducted at a police station or other place of  
10       detention on or after the effective date of this amendatory Act  
11       of the 99th General Assembly shall be presumed to be  
12       inadmissible as evidence in a criminal proceeding or a juvenile  
13       court proceeding for an act that if committed by an adult would  
14       be a misdemeanor offense under Article 11 of the Criminal Code  
15       of 2012 or a felony offense under the Criminal Code of 2012  
16       unless:

17               (1) an electronic recording is made of the custodial  
18       interrogation; and

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

21       (b) An oral, written, or sign language statement of an  
22       accused made as a result of a custodial interrogation conducted  
23       at a police station or other place of detention shall be  
24       presumed to be inadmissible as evidence against the accused in  
25       any criminal proceeding brought under Section 9-1, 9-1.2, 9-2,  
26       9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961 or the

1 Criminal Code of 2012 or under clause (d)(1)(F) of Section  
2 11-501 of the Illinois Vehicle Code unless:

3 (1) an electronic recording is made of the custodial  
4 interrogation; and

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

7 (b-5) Under the following circumstances, an oral, written,  
8 or sign language statement of an accused made as a result of a  
9 custodial interrogation conducted at a police station or other  
10 place of detention shall be presumed to be inadmissible as  
11 evidence against the accused, unless an electronic recording is  
12 made of the custodial interrogation and the recording is  
13 substantially accurate and not intentionally altered:

14 (1) in any criminal proceeding brought under Section  
15 11-1.40 or 20-1.1 of the Criminal Code of 1961 or the  
16 Criminal Code of 2012, if the custodial interrogation was  
17 conducted on or after June 1, 2014;

18 (2) in any criminal proceeding brought under Section  
19 10-2, 18-4, or 19-6 of the Criminal Code of 1961 or the  
20 Criminal Code of 2012, if the custodial interrogation was  
21 conducted on or after June 1, 2015; and

22 (3) in any criminal proceeding brought under Section  
23 11-1.30 or 18-2 or subsection (e) of Section 12-3.05 of the  
24 Criminal Code of 1961 or the Criminal Code of 2012, if the  
25 custodial interrogation was conducted on or after June 1,  
26 2016.

1           (b-10) If, during the course of an electronically recorded  
2           custodial interrogation conducted under this Section, the  
3           accused makes a statement that creates a reasonable suspicion  
4           to believe the accused has committed an offense other than an  
5           offense required to be recorded under subsection (b) or (b-5),  
6           the interrogators may, without the accused's consent, continue  
7           to record the interrogation as it relates to the other offense  
8           notwithstanding any provision of law to the contrary. Any oral,  
9           written, or sign language statement of an accused made as a  
10          result of an interrogation under this subsection shall be  
11          presumed to be inadmissible as evidence against the accused in  
12          any criminal proceeding, unless the recording is substantially  
13          accurate and not intentionally altered.

14          (c) Every electronic recording made under this Section must  
15          be preserved until such time as the defendant's conviction for  
16          any offense relating to the statement is final and all direct  
17          and habeas corpus appeals are exhausted, or the prosecution of  
18          such offenses is barred by 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 this Section, then any statements made by the  
22          defendant during or following that non-recorded custodial  
23          interrogation, even if otherwise in compliance with this  
24          Section, are presumed to be inadmissible in any criminal  
25          proceeding against the defendant except for the purposes of  
26          impeachment.

1 (e) Nothing in this Section precludes the admission (i) of  
2 a statement made by the accused in open court at his or her  
3 trial, before a grand jury, or at a preliminary hearing, (ii)  
4 of a statement made during a custodial interrogation that was  
5 not recorded as required by this Section, because electronic  
6 recording was not feasible, (iii) of a voluntary statement,  
7 whether or not the result of a custodial interrogation, that  
8 has a bearing on the credibility of the accused as a witness,  
9 (iv) of a spontaneous statement that is not made in response to  
10 a question, (v) of a statement made after questioning that is  
11 routinely asked during the processing of the arrest of the  
12 suspect, (vi) of a statement made during a custodial  
13 interrogation by a suspect who requests, prior to making the  
14 statement, to respond to the interrogator's questions only if  
15 an electronic recording is not made of the statement, provided  
16 that an electronic recording is made of the statement of  
17 agreeing to respond to the interrogator's question, only if a  
18 recording is not made of the statement, (vii) of a statement  
19 made during a custodial interrogation that is conducted  
20 out-of-state, (viii) of a statement given in violation of  
21 subsection (b) at a time when the interrogators are unaware  
22 that a death has in fact occurred, (ix) of a statement given in  
23 violation of subsection (b-5) at a time when the interrogators  
24 are unaware of facts and circumstances that would create  
25 probable cause to believe that the accused committed an offense  
26 required to be recorded under subsection (b-5), or (x) of any

1 other statement that may be admissible under law. The State  
2 shall bear the burden of proving, by a preponderance of the  
3 evidence, that one of the exceptions described in this  
4 subsection (e) is applicable. Nothing in this Section precludes  
5 the admission of a statement, otherwise inadmissible under this  
6 Section, that is used only for impeachment and not as  
7 substantive evidence.

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

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

21 (Source: P.A. 97-1150, eff. 1-25-13; 98-547, eff. 1-1-14.)".