

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 brought under Section 9-1, 9-1.2, 9-2, 9-2.1,
8 9-3, 9-3.2, or 9-3.3, of the Criminal Code of 1961 or the
9 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 (b-5) Under the following circumstances, an oral, written,
16 or sign language statement of a minor who, at the time of the
17 commission of the offense was under the age of 17 years, made
18 as a result of a custodial interrogation conducted at a police
19 station or other place of detention shall be presumed to be
20 inadmissible as evidence against the minor, unless an
21 electronic recording is made of the custodial interrogation and
22 the recording is substantially accurate and not intentionally
23 altered:

24 (1) in any criminal proceeding or juvenile court
25 proceeding, for an act that if committed by an adult would
26 be brought under Section 11-1.40 or 20-1.1 of the Criminal

1 Code of 1961 or the Criminal Code of 2012, if the custodial
2 interrogation was conducted on or after June 1, 2014;

3 (2) in any criminal proceeding or juvenile court
4 proceeding, for an act that if committed by an adult would
5 be brought under Section 10-2, 18-4, or 19-6 of the
6 Criminal Code of 1961 or the Criminal Code of 2012, if the
7 custodial interrogation was conducted on or after June 1,
8 2015; and

9 (3) in any criminal proceeding or juvenile court
10 proceeding, for an act that if committed by an adult would
11 be brought under Section 11-1.30 or 18-2 or subsection (e)
12 of Section 12-3.05 of the Criminal Code of 1961 or the
13 Criminal Code of 2012, if the custodial interrogation was
14 conducted on or after June 1, 2016.

15 (b-10) If, during the course of an electronically recorded
16 custodial interrogation conducted under this Section of a minor
17 who, at the time of the commission of the offense was under the
18 age of 17 years, the minor makes a statement that creates a
19 reasonable suspicion to believe the minor has committed an act
20 that if committed by an adult would be an offense other than an
21 offense required to be recorded under subsection (b) or (b-5),
22 the interrogators may, without the minor's consent, continue to
23 record the interrogation as it relates to the other offense
24 notwithstanding any provision of law to the contrary. Any oral,
25 written, or sign language statement of a minor made as a result
26 of an interrogation under this subsection shall be presumed to

1 be inadmissible as evidence against the minor in any criminal
2 proceeding or juvenile court proceeding, unless the recording
3 is substantially accurate and not intentionally altered.

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

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

17 (e) Nothing in this Section precludes the admission (i) of
18 a statement made by the minor in open court in any criminal
19 proceeding or juvenile court proceeding, before a grand jury,
20 or at a preliminary hearing, (ii) of a statement made during a
21 custodial interrogation that was not recorded as required by
22 this Section because electronic recording was not feasible,
23 (iii) of a voluntary statement, whether or not the result of a
24 custodial interrogation, that has a bearing on the credibility
25 of the accused as a witness, (iv) of a spontaneous statement
26 that is not made in response to a question, (v) of a statement

1 made after questioning that is routinely asked during the
2 processing of the arrest of the suspect, (vi) of a statement
3 made during a custodial interrogation by a suspect who
4 requests, prior to making the statement, to respond to the
5 interrogator's questions only if an electronic recording is not
6 made of the statement, provided that an electronic recording is
7 made of the statement of agreeing to respond to the
8 interrogator's question, only if a recording is not made of the
9 statement, (vii) of a statement made during a custodial
10 interrogation that is conducted out-of-state, (viii) of a
11 statement given in violation of subsection (b) at a time when
12 the interrogators are unaware that a death has in fact
13 occurred, (ix) of a statement given in violation of subsection
14 (b-5) at a time when the interrogators are unaware of facts and
15 circumstances that would create probable cause to believe that
16 the minor committed an act that if committed by an adult would
17 be an offense required to be recorded under subsection (b-5),
18 or (x) or ~~(ix)~~ of any other statement that may be admissible
19 under law. The State shall bear the burden of proving, by a
20 preponderance of the evidence, that one of the exceptions
21 described in this subsection (e) is applicable. Nothing in this
22 Section precludes the admission of a statement, otherwise
23 inadmissible under this Section, that is used only for
24 impeachment and not as substantive evidence.

25 (f) The presumption of inadmissibility of a statement made
26 by a suspect at a custodial interrogation at a police station

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

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

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

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

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

1 (725 ILCS 5/103-2.1)

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

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

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

15 In this Section, "electronic recording" includes motion
16 picture, audiotape, or videotape, or digital recording.

17 (b) An oral, written, or sign language statement of an
18 accused made as a result of a custodial interrogation conducted
19 at a police station or other place of detention shall be
20 presumed to be inadmissible as evidence against the accused in
21 any criminal proceeding brought under Section 9-1, 9-1.2, 9-2,
22 9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961 or the
23 Criminal Code of 2012 or under clause (d)(1)(F) of Section
24 11-501 of the Illinois Vehicle Code unless:

25 (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 an accused made as a result of a
6 custodial interrogation conducted at a police station or other
7 place of detention shall be presumed to be inadmissible as
8 evidence against the accused, unless an electronic recording is
9 made of the custodial interrogation and the recording is
10 substantially accurate and not intentionally altered:

11 (1) in any criminal proceeding brought under Section
12 11-1.40 or 20-1.1 of the Criminal Code of 1961 or the
13 Criminal Code of 2012, if the custodial interrogation was
14 conducted on or after June 1, 2014;

15 (2) in any criminal proceeding brought under Section
16 10-2, 18-4, or 19-6 of the Criminal Code of 1961 or the
17 Criminal Code of 2012, if the custodial interrogation was
18 conducted on or after June 1, 2015; and

19 (3) in any criminal proceeding brought under Section
20 11-1.30 or 18-2 or subsection (e) of Section 12-3.05 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 2016.

24 (b-10) If, during the course of an electronically recorded
25 custodial interrogation conducted under this Section, the
26 accused makes a statement that creates a reasonable suspicion

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

11 (c) Every electronic recording made ~~required~~ under this
12 Section must be preserved until such time as the defendant's
13 conviction for any offense relating to the statement is final
14 and all 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 in violation of
18 subsection (b) at a time when the interrogators are unaware
19 that a death has in fact occurred, (ix) of a statement given in
20 violation of subsection (b-5) at a time when the interrogators
21 are unaware of facts and circumstances that would create
22 probable cause to believe that the accused committed an offense
23 required to be recorded under subsection (b-5), or (x) ~~or (ix)~~
24 of any other statement that may be admissible under law. The
25 State shall bear the burden of proving, by a preponderance of
26 the evidence, that one of the exceptions described in this

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

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

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

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