



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1265

Introduced 2/9/2017, by Sen. Patricia Van Pelt

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-170
705 ILCS 405/5-401.5
725 ILCS 5/103-2.1

Amends the Juvenile Court Act of 1987. Provides that minors under 18 years of age (rather than 15 years of age) at the time of the commission of an act committed by an adult would be a violation of first degree murder, intentional homicide of an unborn child, second degree murder, voluntary manslaughter of an unborn child, involuntary manslaughter and reckless homicide, involuntary manslaughter and reckless homicide of an unborn child, drug-induced homicide, criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual abuse, or aggravated criminal sexual abuse, must be represented by counsel throughout the entire custodial interrogation of the minor. Provides that an oral, written, or sign language statement of a minor made without the presence of counsel during a custodial interrogation in violation of the Act on or after the effective date of the bill shall be inadmissible as evidence against the minor in a proceeding under the Act or under the Criminal Code of 2012. Makes a conforming change in the Code of Criminal Procedure of 1963.

LRB100 08380 SLF 18489 b

1 AN ACT concerning courts.

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 ~~15~~ 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 the entire custodial
15 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. 99-882, eff. 1-1-17.)

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

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

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

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

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

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

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

21 (1) an electronic recording is made of the custodial
22 interrogation; and

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

25 (b-5) (Blank).

26 (b-7) An oral, written, or sign language statement of a

1 minor made without the presence of counsel during a custodial
2 interrogation in violation of Section 5-170 of this Act on or
3 after the effective date of this amendatory Act of the 100th
4 General Assembly shall be inadmissible as evidence against the
5 minor in a proceeding under this Act or in a proceeding under
6 the Criminal Code of 2012.

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

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

1 (d) If the court finds, by a preponderance of the evidence,
2 that the minor was subjected to a custodial interrogation in
3 violation of this Section, then any statements made by the
4 minor during or following that non-recorded custodial
5 interrogation, even if otherwise in compliance with this
6 Section, are presumed to be inadmissible in any criminal
7 proceeding or juvenile court proceeding against the minor
8 except for the purposes of impeachment.

9 (e) Nothing in this Section precludes the admission (i) of
10 a statement made by the minor in open court in any criminal
11 proceeding or juvenile court proceeding, before a grand jury,
12 or at a preliminary hearing, (ii) of a statement made during a
13 custodial interrogation that was not recorded as required by
14 this Section because electronic recording was not feasible,
15 (iii) of a voluntary statement, whether or not the result of a
16 custodial interrogation, that has a bearing on the credibility
17 of the accused as a witness, (iv) of a spontaneous statement
18 that is not made in response to a question, (v) of a statement
19 made after questioning that is routinely asked during the
20 processing of the arrest of the suspect, (vi) of a statement
21 made during a custodial interrogation by a suspect who
22 requests, prior to making the statement, to respond to the
23 interrogator's questions only if an electronic recording is not
24 made of the statement, provided that an electronic recording is
25 made of the statement of agreeing to respond to the
26 interrogator's question, only if a recording is not made of the

1 statement, (vii) of a statement made during a custodial
2 interrogation that is conducted out-of-state, (viii) of a
3 statement given in violation of subsection (b) at a time when
4 the interrogators are unaware that a death has in fact
5 occurred, (ix) (blank), or (x) of any other statement that may
6 be 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. 98-61, eff. 1-1-14; 98-547, eff. 1-1-14; 98-756,
14 eff. 7-16-14; 99-882, eff. 1-1-17.)

15 Section 10. 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 inadmissible when the
12 statement is obtained from the minor while the minor is subject
13 to custodial interrogation by a law enforcement officer,
14 State's Attorney, juvenile officer, or other public official or
15 employee prior to the officer, State's Attorney, public
16 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 (a-15) An oral, written, or sign language statement of a
22 minor made without the presence of counsel during a custodial
23 interrogation in violation of Section 5-170 of the Juvenile
24 Court Act of 1987 on or after the effective date of this
25 amendatory Act of the 100th General Assembly shall be
26 inadmissible as evidence against the minor in a proceeding

1 under the Juvenile Court Act of 1987 or in a proceeding under
2 the Criminal Code of 2012.

3 (b) An oral, written, or sign language statement of an
4 accused made as a result of a custodial interrogation conducted
5 at a police station or other place of detention shall be
6 presumed to be inadmissible as evidence against the accused in
7 any criminal proceeding 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 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 an accused made as a result of a
17 custodial interrogation conducted at a police station or other
18 place of detention shall be presumed to be inadmissible as
19 evidence against the accused, unless an electronic recording is
20 made of the custodial interrogation and the recording is
21 substantially accurate and not intentionally altered:

22 (1) in any criminal proceeding brought under Section
23 11-1.40 or 20-1.1 of the Criminal Code of 1961 or the
24 Criminal Code of 2012, if the custodial interrogation was
25 conducted on or after June 1, 2014;

26 (2) in any criminal proceeding brought under Section

1 10-2, 18-4, or 19-6 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, 2015; and

4 (3) in any criminal proceeding brought under Section
5 11-1.30 or 18-2 or subsection (e) of Section 12-3.05 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 2016.

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

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

1 (d) If the court finds, by a preponderance of the evidence,
2 that the defendant was subjected to a custodial interrogation
3 in violation of this Section, then any statements made by the
4 defendant during or following that non-recorded custodial
5 interrogation, even if otherwise in compliance with this
6 Section, are presumed to be inadmissible in any criminal
7 proceeding against the defendant except for the purposes of
8 impeachment.

9 (e) Nothing in this Section precludes the admission (i) of
10 a statement made by the accused in open court at his or her
11 trial, before a grand jury, or at a preliminary hearing, (ii)
12 of a statement made during a custodial interrogation that was
13 not recorded as required by this Section, because electronic
14 recording was not feasible, (iii) of a voluntary statement,
15 whether or not the result of a custodial interrogation, that
16 has a bearing on the credibility of the accused as a witness,
17 (iv) of a spontaneous statement that is not made in response to
18 a question, (v) of a statement made after questioning that is
19 routinely asked during the processing of the arrest of the
20 suspect, (vi) of a statement made during a custodial
21 interrogation by a suspect who requests, prior to making the
22 statement, to respond to the interrogator's questions only if
23 an electronic recording is not made of the statement, provided
24 that an electronic recording is made of the statement of
25 agreeing to respond to the interrogator's question, only if a
26 recording is not made of the statement, (vii) of a statement

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

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

21 (g) Any electronic recording of any statement made by an
22 accused during a custodial interrogation that is compiled by
23 any law enforcement agency as required by this Section for the
24 purposes of fulfilling the requirements of this Section shall
25 be confidential and exempt from public inspection and copying,
26 as provided under Section 7 of the Freedom of Information Act,

1 and the information shall not be transmitted to anyone except
2 as needed to comply with this Section.

3 (Source: P.A. 98-547, eff. 1-1-14; 99-882, eff. 1-1-17.)