



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2922

by Rep. Justin Slaughter

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-401.5

725 ILCS 5/103-2.1

Amends the Code of Criminal Procedure of 1963. Provides that an oral, written, or sign language statement of an accused made as a result of a custodial interrogation conducted at a police station or other place of detention shall be presumed to be inadmissible as evidence against the accused in any criminal proceeding (rather than criminal proceedings involving specified offenses) unless: (1) an electronic recording is made of the custodial interrogation; and (2) the recording is substantially accurate and not intentionally altered. Makes conforming changes to the Juvenile Court Act of 1987.

LRB101 10181 SLF 55285 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 (a-5) An oral, written, or sign language statement of a
23 minor, who at the time of the commission of the offense was

1 under 18 years of age, is presumed to be inadmissible when the
2 statement is obtained from the minor while the minor is subject
3 to custodial interrogation by a law enforcement officer,
4 State's Attorney, juvenile officer, or other public official or
5 employee prior to the officer, State's Attorney, public
6 official, or employee:

7 (1) continuously reading ~~reads~~ to the minor, in its
8 entirety and without stopping for purposes of a response
9 from the minor or verifying comprehension, the following
10 statement: "You have the right to remain silent. That means
11 you do not have to say anything. Anything you do say can be
12 used against you in court. You have the right to get help
13 from a lawyer. If you cannot pay for a lawyer, the court
14 will get you one for free. You can ask for a lawyer at any
15 time. You have the right to stop this interview at any
16 time."; and

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

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

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

23 (b) An oral, written, or sign language statement of a minor
24 who, at the time of the commission of the offense was under the
25 age of 18 years, made as a result of a custodial interrogation
26 conducted at a police station or other place of detention ~~on or~~

1 ~~after the effective date of this amendatory Act of the 99th~~
2 ~~General Assembly shall be presumed to be inadmissible as~~
3 ~~evidence against the minor in any criminal proceeding or~~
4 ~~juvenile court proceeding, for an act that if committed by an~~
5 ~~adult would be a misdemeanor offense under Article 11 of the~~
6 ~~Criminal Code of 2012 or any felony offense unless:~~

7 (1) an electronic recording is made of the custodial
8 interrogation; and

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

11 (b-5) (Blank).

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

1 ~~not intentionally altered.~~

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

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

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

1 made during a custodial interrogation by a suspect who
2 requests, prior to making the statement, to respond to the
3 interrogator's questions only if an electronic recording is not
4 made of the statement, provided that an electronic recording is
5 made of the statement of agreeing to respond to the
6 interrogator's question, only if a recording is not made of the
7 statement, (vii) of a statement made during a custodial
8 interrogation that is conducted out-of-state, (viii) of a
9 statement given in violation of subsection (b) at a time when
10 the interrogators are unaware that a death has in fact
11 occurred, (ix) (blank), or (x) of any other statement that may
12 be admissible under law. The State shall bear the burden of
13 proving, by a preponderance of the evidence, that one of the
14 exceptions described in this subsection (e) is applicable.
15 Nothing in this Section precludes the admission of a statement,
16 otherwise inadmissible under this Section, that is used only
17 for impeachment and not as 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. 98-61, eff. 1-1-14; 98-547, eff. 1-1-14; 98-756,
20 eff. 7-16-14; 99-882, eff. 1-1-17.)

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

23 (725 ILCS 5/103-2.1)

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

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

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, not a courthouse, that is owned or operated
10 by a law enforcement agency at which persons are or may be held
11 in detention in connection with criminal charges against those
12 persons.

13 In this Section, "electronic recording" includes motion
14 picture, audiotape, or videotape, or digital recording.

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

23 (1) continuously reading ~~reads~~ to the minor, in its
24 entirety and without stopping for purposes of a response
25 from the minor or verifying comprehension, the following
26 statement: "You have the right to remain silent. That means

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

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

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

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

13 (a-10) (Blank). ~~An oral, written, or sign language~~
14 ~~statement of a minor, who at the time of the commission of the~~
15 ~~offense was under 18 years of age, made as a result of a~~
16 ~~eustodial interrogation conducted at a police station or other~~
17 ~~place of detention on or after the effective date of this~~
18 ~~amendatory Act of the 99th General Assembly shall be presumed~~
19 ~~to be inadmissible as evidence in a criminal proceeding or a~~
20 ~~juvenile court proceeding for an act that if committed by an~~
21 ~~adult would be a misdemeanor offense under Article 11 of the~~
22 ~~Criminal Code of 2012 or a felony offense under the Criminal~~
23 ~~Code of 2012 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) An oral, written, or sign language statement of an
3 accused made as a result of a custodial interrogation conducted
4 at a police station or other place of detention shall be
5 presumed to be inadmissible as evidence against the accused in
6 any criminal proceeding ~~brought under Section 9-1, 9-1.2, 9-2,~~
7 ~~9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961 or the~~
8 ~~Criminal Code of 2012 or under clause (d)(1)(F) of Section~~
9 ~~11-501 of the Illinois Vehicle Code unless:~~

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

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

14 (b-5) (Blank). ~~Under the following circumstances, an oral,~~
15 ~~written, or sign language statement of an accused made as a~~
16 ~~result of a custodial interrogation conducted at a police~~
17 ~~station or other place of detention shall be presumed to be~~
18 ~~inadmissible as evidence against the accused, unless an~~
19 ~~electronic recording is made of the custodial interrogation and~~
20 ~~the recording is substantially accurate and not intentionally~~
21 ~~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 (c) 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) (Blank). ~~If, during the course of an electronically~~
10 ~~recorded custodial interrogation conducted under this Section,~~
11 ~~the accused makes a statement that creates a reasonable~~
12 ~~suspicion to believe the accused has committed an offense other~~
13 ~~than an offense required to be recorded under subsection (b) or~~
14 ~~(b-5), the interrogators may, without the accused's consent,~~
15 ~~continue to record the interrogation as it relates to the other~~
16 ~~offense notwithstanding any provision of law to the contrary.~~
17 ~~Any oral, written, or sign language statement of an accused~~
18 ~~made as a result of an interrogation under this subsection~~
19 ~~shall be presumed to be inadmissible as evidence against the~~
20 ~~accused in any criminal proceeding, unless the recording is~~
21 ~~substantially 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) (blank) ~~of a statement~~
5 ~~given in violation of subsection (b 5) at a time when the~~
6 ~~interrogators are unaware of facts and circumstances that would~~
7 ~~create probable cause to believe that the accused committed an~~
8 ~~offense required to be recorded under subsection (b 5), or (x)~~
9 of any other statement that may be admissible under law. The
10 State shall bear the burden of proving, by a preponderance of
11 the 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.)