



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB6129

Introduced 2/11/2010, by Rep. William D. Burns

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-401.5

Amends the Juvenile Court Act of 1987. Provides that a statement, admission, confession, or incriminating information made by or obtained from a minor or parent or guardian as part of any behavioral health screening, assessment, evaluation, or treatment, whether or not court-ordered, shall not be admissible as evidence against the minor on the issue of whether the minor committed a delinquent act in a juvenile court proceeding or on the issue of guilt in a criminal proceeding.

LRB096 18829 RLC 34215 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 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 under
9 clause (d) (1) (F) of Section 11-501 of the Illinois Vehicle Code
10 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 (c) Every electronic recording required under this Section
16 must be preserved until such time as the minor's adjudication
17 for any offense relating to the statement is final and all
18 direct and habeas corpus appeals are exhausted, or the
19 prosecution of such offenses is barred by law.

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

1 except for the purposes of impeachment.

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

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

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

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

17 (h) A statement, admission, confession, or incriminating
18 information made by or obtained from a minor or parent or
19 guardian as part of any behavioral health screening,
20 assessment, evaluation, or treatment, whether or not
21 court-ordered, shall not be admissible as evidence against the
22 minor on the issue of whether the minor committed a delinquent
23 act in a juvenile court proceeding or on the issue of guilt in
24 a criminal proceeding.

25 (Source: P.A. 93-206, eff. 7-18-05; 93-517, eff. 8-6-05;
26 94-117, eff. 7-5-05.)