

# SB3407



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB3407

Introduced 2/10/2010, by Sen. Kwame Raoul

#### SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-401.5

Amends the Juvenile Court Act of 1987. Provides that an oral, written, or sign language statement of a minor who, at the time of the commission of the offense was under the age of 17 years, 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 minor in any criminal proceeding, for an act that if committed by an adult would be homicide or would be driving under the influence that was the proximate cause of death of another person unless the minor was allowed to consult with and have access to counsel throughout the entire custodial interrogation.

LRB096 18838 RLC 34224 b

A BILL FOR

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 (b-1) An oral, written, or sign language statement of a  
16 minor who, at the time of the commission of the offense was  
17 under the age of 17 years, made as a result of a custodial  
18 interrogation conducted at a police station or other place of  
19 detention on or after July 18, 2005 shall be presumed to be  
20 inadmissible as evidence against the minor in any criminal  
21 proceeding, for an act that if committed by an adult would be  
22 brought under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or  
23 9-3.3, of the Criminal Code of 1961 or under clause (d) (1) (F)  
24 of Section 11-501 of the Illinois Vehicle Code unless the minor  
25 was allowed to consult with and have access to counsel  
26 throughout the entire custodial interrogation.

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

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

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

1 requests, prior to making the statement, to respond to the  
2 interrogator's questions only if an electronic recording is not  
3 made of the statement, provided that an electronic recording is  
4 made of the statement of agreeing to respond to the  
5 interrogator's question, only if a recording is not made of the  
6 statement, (vii) of a statement made during a custodial  
7 interrogation that is conducted out-of-state, (viii) of a  
8 statement given at a time when the interrogators are unaware  
9 that a death has in fact occurred, or (ix) of any other  
10 statement that may be admissible under law. The State shall  
11 bear the burden of proving, by a preponderance of the evidence,  
12 that one of the exceptions described in this subsection (e) is  
13 applicable. Nothing in this Section precludes the admission of  
14 a statement, otherwise inadmissible under this Section, that is  
15 used only for impeachment and not as 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 a  
22 minor during a custodial interrogation that is compiled by any  
23 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. 93-206, eff. 7-18-05; 93-517, eff. 8-6-05;  
4 94-117, eff. 7-5-05.)