



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB5262

Introduced 2/8/2012, by Rep. Arthur Turner

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/103-2.1

Amends the Code of Criminal Procedure of 1963. Provides that an oral, written, sign language, or electronically recorded statement of an accused made as a result of a custodial interrogation at a police station or other place of detention by a law enforcement officer or prosecutor may be admissible as evidence against the accused in any criminal proceeding when the accused is in custody for first degree murder, intentional homicide of an unborn child, second degree murder, voluntary manslaughter of an unborn child, involuntary manslaughter, reckless homicide, involuntary manslaughter of an unborn child, reckless homicide of an unborn child, or driving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof and the defendant was involved in a motor vehicle, snowmobile, all-terrain vehicle, or watercraft accident that resulted in the death of another person, when driving while under the influence was a proximate cause of the death and the accused is questioned regarding any other offenses while in custody for one or more of these specified offenses. Effective immediately.

LRB097 18645 RLC 63879 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 Code of Criminal Procedure of 1963 is  
5 amended by changing Section 103-2.1 as follows:

6 (725 ILCS 5/103-2.1)

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

8 (a) In this Section, "custodial interrogation" means any  
9 interrogation during which (i) 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, "place of detention" means a building or a  
14 police station that is a place of operation for a municipal  
15 police department or county sheriff department or other law  
16 enforcement agency, not a courthouse, that is owned or operated  
17 by a law enforcement agency at which persons are or may be held  
18 in detention in connection with criminal charges against those  
19 persons.

20 In this Section, "electronic recording" includes motion  
21 picture, audiotape, or videotape, or digital recording.

22 (b) An oral, written, or sign language statement of an  
23 accused made as a result of a custodial interrogation at a

1 police station or other place of detention shall be presumed to  
2 be inadmissible as evidence against the accused in any criminal  
3 proceeding brought under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3,  
4 9-3.2, or 9-3.3 of the Criminal Code of 1961 or under clause  
5 (d)(1)(F) of Section 11-501 of the Illinois Vehicle Code  
6 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) An oral, written, sign language, or electronically  
12 recorded statement of an accused made as a result of a  
13 custodial interrogation at a police station or other place of  
14 detention by a law enforcement officer or prosecutor may be  
15 admissible as evidence against the accused in any criminal  
16 proceeding when the accused is in custody for an offense under  
17 Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3 of the  
18 Criminal Code of 1961 or under clause (d)(1)(F) of Section  
19 11-501 of the Illinois Vehicle Code and the accused is  
20 questioned regarding any other offenses while in custody for an  
21 offense or offenses listed in this subsection.

22 (c) Every electronic recording required under this Section  
23 must be preserved until such time as the defendant's conviction  
24 for any offense relating to the statement is final and all  
25 direct and habeas corpus appeals are exhausted, or the  
26 prosecution of 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 at a time when the  
3 interrogators are unaware that a death has in fact occurred, or  
4 (ix) of any other statement that may be admissible under law.  
5 The State shall bear the burden of proving, by a preponderance  
6 of the evidence, that one of the exceptions described in this  
7 subsection (e) is applicable. Nothing in this Section precludes  
8 the admission of a statement, otherwise inadmissible under this  
9 Section, that is used only for impeachment and not as  
10 substantive evidence.

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

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

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

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.