



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

SB1332

Introduced 2/5/2013, by Sen. Kwame Raoul

#### SYNOPSIS AS INTRODUCED:

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

Amends the Juvenile Court Act of 1987 and 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 at a police station or other place of detention shall be presumed to be inadmissible as evidence against the accused in any criminal or juvenile court proceeding in which the accused is charged with the commission of an offense that is a homicide or a Class 1 felony or a Class X felony (rather than a homicide offense or a DUI offense in which the DUI was the proximate cause of death) unless: (1) an electronic recording is made of the custodial interrogation; and (2) the recording is substantially accurate and not intentionally altered. Allows the admissibility of a statement given at a time when the interrogators are unaware that the offense could be charged as a homicide or as a Class 1 felony or Class X felony.

LRB098 02902 RLC 37674 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 (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 the  
9 Criminal Code of 2012, or under clause (d)(1)(F) of Section  
10 11-501 of the Illinois Vehicle Code or could be charged as a  
11 Class 1 felony or Class X felony unless:

12 (1) an electronic recording is made of the custodial  
13 interrogation; and

14 (2) the recording is substantially accurate and not  
15 intentionally altered.

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

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

1 proceeding or juvenile court proceeding against the minor  
2 except for the purposes of impeachment.

3 (e) Nothing in this Section precludes the admission (i) of  
4 a statement made by the minor in open court in any criminal  
5 proceeding or juvenile court proceeding, before a grand jury,  
6 or at a preliminary hearing, (ii) of a statement made during a  
7 custodial interrogation that was not recorded as required by  
8 this Section because electronic recording was not feasible,  
9 (iii) of a voluntary statement, whether or not the result of a  
10 custodial interrogation, that has a bearing on the credibility  
11 of the accused as a witness, (iv) of a spontaneous statement  
12 that is not made in response to a question, (v) of a statement  
13 made after questioning that is routinely asked during the  
14 processing of the arrest of the suspect, (vi) of a statement  
15 made during a custodial interrogation by a suspect who  
16 requests, prior to making the statement, to respond to the  
17 interrogator's questions only if an electronic recording is not  
18 made of the statement, provided that an electronic recording is  
19 made of the statement of agreeing to respond to the  
20 interrogator's question, only if a recording is not made of the  
21 statement, (vii) of a statement made during a custodial  
22 interrogation that is conducted out-of-state, (viii) of a  
23 statement given at a time when the interrogators are unaware  
24 that the act, if committed by an adult could be brought under  
25 Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3 of the  
26 Criminal Code of 1961 or the Criminal Code of 2012, or under

1 clause (d)(1)(F) of Section 11-501 of the Illinois Vehicle  
2 Code, or could be charged as a Class 1 felony or Class X felony  
3 ~~a death has in fact occurred~~, or (ix) of any other statement  
4 that may be admissible under law. The State shall bear the  
5 burden of proving, by a preponderance of the evidence, that one  
6 of the exceptions described in this subsection (e) is  
7 applicable. Nothing in this Section precludes the admission of  
8 a statement, otherwise inadmissible under this Section, that is  
9 used only for impeachment and not as substantive evidence.

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

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

23 (h) A statement, admission, confession, or incriminating  
24 information made by or obtained from a minor related to the  
25 instant offense, as part of any behavioral health screening,  
26 assessment, evaluation, or treatment, whether or not

1 court-ordered, shall not be admissible as evidence against the  
2 minor on the issue of guilt only in the instant juvenile court  
3 proceeding. The provisions of this subsection (h) are in  
4 addition to and do not override any existing statutory and  
5 constitutional prohibition on the admission into evidence in  
6 delinquency proceedings of information obtained during  
7 screening, assessment, or treatment.

8 (Source: P.A. 96-1251, eff. 1-1-11.)

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

11 (725 ILCS 5/103-2.1)

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

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

18 In this Section, "place of detention" means a building or a  
19 police station that is a place of operation for a municipal  
20 police department or county sheriff department or other law  
21 enforcement agency, not a courthouse, that is owned or operated  
22 by a law enforcement agency at which persons are or may be held  
23 in detention in connection with criminal charges against those  
24 persons.

1           In this Section, "electronic recording" includes motion  
2 picture, audiotape, or videotape, or digital recording.

3           (b) An oral, written, or sign language statement of an  
4 accused made as a result of a custodial interrogation at a  
5 police station or other place of detention shall be presumed to  
6 be inadmissible as evidence against the accused in any criminal  
7 proceeding brought under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3,  
8 9-3.2, or 9-3.3 of the Criminal Code of 1961 or the Criminal  
9 Code of 2012, or under clause (d)(1)(F) of Section 11-501 of  
10 the Illinois Vehicle Code or in which the accused is charged  
11 with the commission of an offense that is a Class 1 felony or  
12 Class X felony unless:

13                   (1) an electronic recording is made of the custodial  
14 interrogation; and

15                   (2) the recording is substantially accurate and not  
16 intentionally altered.

17           (c) Every electronic recording required under this Section  
18 must be preserved until such time as the defendant's conviction  
19 for any offense relating to the statement is final and all  
20 direct and habeas corpus appeals are exhausted, or the  
21 prosecution of such offenses is barred by law.

22           (d) If the court finds, by a preponderance of the evidence,  
23 that the defendant was subjected to a custodial interrogation  
24 in violation of this Section, then any statements made by the  
25 defendant during or following that non-recorded custodial  
26 interrogation, even if otherwise in compliance with this

1 Section, are presumed to be inadmissible in any criminal  
2 proceeding against the defendant except for the purposes of  
3 impeachment.

4 (e) Nothing in this Section precludes the admission (i) of  
5 a statement made by the accused in open court at his or her  
6 trial, before a grand jury, or at a preliminary hearing, (ii)  
7 of a statement made during a custodial interrogation that was  
8 not recorded as required by this Section, because electronic  
9 recording was not feasible, (iii) of a voluntary statement,  
10 whether or not the result of a custodial interrogation, that  
11 has a bearing on the credibility of the accused as a witness,  
12 (iv) of a spontaneous statement that is not made in response to  
13 a question, (v) of a statement made after questioning that is  
14 routinely asked during the processing of the arrest of the  
15 suspect, (vi) of a statement made during a custodial  
16 interrogation by a suspect who requests, prior to making the  
17 statement, to respond to the interrogator's questions only if  
18 an electronic recording is not made of the statement, provided  
19 that an electronic recording is made of the statement of  
20 agreeing to respond to the interrogator's question, only if a  
21 recording is not made of the statement, (vii) of a statement  
22 made during a custodial interrogation that is conducted  
23 out-of-state, (viii) of a statement given at a time when the  
24 interrogators are unaware that the offense could be charged  
25 under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3 of  
26 the Criminal Code of 1961 or the Criminal Code of 2012, or



1 under clause (d)(1)(F) of Section 11-501 of the Illinois  
2 Vehicle Code or as a Class 1 felony or Class X felony ~~a death~~  
3 ~~has in fact occurred~~, or (ix) of any other statement that may  
4 be admissible under law. The State shall bear the burden of  
5 proving, by a preponderance of the evidence, that one of the  
6 exceptions described in this subsection (e) is applicable.  
7 Nothing in this Section precludes the admission of a statement,  
8 otherwise inadmissible under this Section, that is used only  
9 for impeachment and not as substantive evidence.

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

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

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