



Sen. Kwame Raoul

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LRB098 02902 RLC 41674 a

1 AMENDMENT TO SENATE BILL 1332

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1332 by replacing  
3 everything after the enacting clause with the following:

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

1 police department or county sheriff department or other law  
2 enforcement agency at which persons are or may be held in  
3 detention in connection with criminal charges against those  
4 persons or allegations that those persons are delinquent  
5 minors.

6 (b) An oral, written, or sign language statement of a minor  
7 who, at the time of the commission of the offense was under the  
8 age of 17 years, made as a result of a custodial interrogation  
9 conducted at a police station or other place of detention on or  
10 after the effective date of this amendatory Act of the 93rd  
11 General Assembly shall be presumed to be inadmissible as  
12 evidence against the minor in any criminal proceeding or  
13 juvenile court proceeding, for an act that if committed by an  
14 adult would be brought under Section 9-1, 9-1.2, 9-2, 9-2.1,  
15 9-3, 9-3.2, or 9-3.3, of the Criminal Code of 1961 or the  
16 Criminal Code of 2012, or under clause (d)(1)(F) of Section  
17 11-501 of the Illinois Vehicle Code or could be charged as a  
18 Class 1 felony or Class X felony unless:

19 (1) an electronic recording is made of the custodial  
20 interrogation; and

21 (2) the recording is substantially accurate and not  
22 intentionally altered.

23 (b-1) Unless the court has granted a pretrial motion to  
24 suppress the contents of an electronically recorded custodial  
25 interrogation, an electronic recording made of an accused for  
26 any offense may be admissible as evidence against the accused

1 in any criminal proceeding provided:

2 (1) the recording was made while the accused was in  
3 custody for a violation of Section 9-1, 9-1.2, 9-2, 9-2.1,  
4 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961 or the  
5 Criminal Code of 2012 or under clause (d) (1) (F) of Section  
6 11-501 of the Illinois Vehicle Code or a Class 1 felony or  
7 Class X felony;

8 (2) the recording was made as a result of a custodial  
9 interrogation at a police station or other place of  
10 detention; and

11 (3) the recording is substantially accurate and not  
12 intentionally altered.

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

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

26 (e) Nothing in this Section precludes the admission (i) of

1 a statement made by the minor in open court in any criminal  
2 proceeding or juvenile court proceeding, before a grand jury,  
3 or at a preliminary hearing, (ii) of a statement made during a  
4 custodial interrogation that was not recorded as required by  
5 this Section because electronic recording was not feasible,  
6 (iii) of a voluntary statement, whether or not the result of a  
7 custodial interrogation, that has a bearing on the credibility  
8 of the accused as a witness, (iv) of a spontaneous statement  
9 that is not made in response to a question, (v) of a statement  
10 made after questioning that is routinely asked during the  
11 processing of the arrest of the suspect, (vi) of a statement  
12 made during a custodial interrogation by a suspect who  
13 requests, prior to making the statement, to respond to the  
14 interrogator's questions only if an electronic recording is not  
15 made of the statement, provided that an electronic recording is  
16 made of the statement of agreeing to respond to the  
17 interrogator's question, only if a recording is not made of the  
18 statement, (vii) of a statement made during a custodial  
19 interrogation that is conducted out-of-state, (viii) of a  
20 statement given at a time when the interrogators are unaware  
21 that the act, if committed by an adult could be brought under  
22 Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3 of the  
23 Criminal Code of 1961 or the Criminal Code of 2012, or under  
24 clause (d)(1)(F) of Section 11-501 of the Illinois Vehicle  
25 Code, or could be charged as a Class 1 felony or Class X felony  
26 ~~a death has in fact occurred~~, or (ix) of any other statement

1 that may be admissible under law. The State shall bear the  
2 burden of proving, by a preponderance of the evidence, that one  
3 of the exceptions described in this subsection (e) is  
4 applicable. Nothing in this Section precludes the admission of  
5 a statement, otherwise inadmissible under this Section, that is  
6 used only for impeachment and not as substantive evidence.

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

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

20 (h) A statement, admission, confession, or incriminating  
21 information made by or obtained from a minor related to the  
22 instant offense, as part of any behavioral health screening,  
23 assessment, evaluation, or treatment, whether or not  
24 court-ordered, shall not be admissible as evidence against the  
25 minor on the issue of guilt only in the instant juvenile court  
26 proceeding. The provisions of this subsection (h) are in

1 addition to and do not override any existing statutory and  
2 constitutional prohibition on the admission into evidence in  
3 delinquency proceedings of information obtained during  
4 screening, assessment, or treatment.

5 (Source: P.A. 96-1251, eff. 1-1-11; 97-1150, eff. 1-25-13.)

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

8 (725 ILCS 5/103-2.1)

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

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

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

22 In this Section, "electronic recording" includes motion  
23 picture, audiotape, or videotape, or digital recording.

24 (b) An oral, written, or sign language statement of an

1 accused made as a result of a custodial interrogation at a  
2 police station or other place of detention shall be presumed to  
3 be inadmissible as evidence against the accused in any criminal  
4 proceeding brought under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3,  
5 9-3.2, or 9-3.3 of the Criminal Code of 1961 or the Criminal  
6 Code of 2012 or under clause (d) (1) (F) of Section 11-501 of the  
7 Illinois Vehicle Code or in which the accused is charged with  
8 the commission of an offense that is a Class 1 felony or Class  
9 X felony 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-1) Unless the court has granted a pretrial motion to  
15 suppress the contents of an electronically recorded custodial  
16 interrogation, an electronic recording made of an accused for  
17 any offense may be admissible as evidence against the accused  
18 in any criminal proceeding provided:

19 (1) the recording was made while the accused was in  
20 custody for a violation of Section 9-1, 9-1.2, 9-2, 9-2.1,  
21 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961 or the  
22 Criminal Code of 2012 or under clause (d) (1) (F) of Section  
23 11-501 of the Illinois Vehicle Code or a Class 1 felony or  
24 Class X felony;

25 (2) the recording was made as a result of a custodial  
26 interrogation at a police station or other place of

1           detention; and

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

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

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

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



1 routinely asked during the processing of the arrest of the  
2 suspect, (vi) of a statement made during a custodial  
3 interrogation by a suspect who requests, prior to making the  
4 statement, to respond to the interrogator's questions only if  
5 an electronic recording is not made of the statement, provided  
6 that an electronic recording is made of the statement of  
7 agreeing to respond to the interrogator's question, only if a  
8 recording is not made of the statement, (vii) of a statement  
9 made during a custodial interrogation that is conducted  
10 out-of-state, (viii) of a statement given at a time when the  
11 interrogators are unaware that the offense could be charged  
12 under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3 of  
13 the Criminal Code of 1961 or the Criminal Code of 2012, or  
14 under clause (d)(1)(F) of Section 11-501 of the Illinois  
15 Vehicle Code or as a Class 1 felony or Class X felony ~~a death~~  
16 ~~has in fact occurred~~, or (ix) of any other statement that may  
17 be admissible under law. The State shall bear the burden of  
18 proving, by a preponderance of the evidence, that one of the  
19 exceptions described in this subsection (e) is applicable.  
20 Nothing in this Section precludes the admission of a statement,  
21 otherwise inadmissible under this Section, that is used only  
22 for impeachment and not as substantive evidence.

23 (f) The presumption of inadmissibility of a statement made  
24 by a suspect at a custodial interrogation at a police station  
25 or other place of detention may be overcome by a preponderance  
26 of the evidence that the statement was voluntarily given and is

1 reliable, based on the totality of the circumstances.

2 (g) Any electronic recording of any statement made by an  
3 accused during a custodial interrogation that is compiled by  
4 any law enforcement agency as required by this Section for the  
5 purposes of fulfilling the requirements of this Section shall  
6 be confidential and exempt from public inspection and copying,  
7 as provided under Section 7 of the Freedom of Information Act,  
8 and the information shall not be transmitted to anyone except  
9 as needed to comply with this Section.

10 (Source: P.A. 97-1150, eff. 1-25-13.)".