



Sen. Kwame Raoul

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LRB098 02902 RLC 44627 a

1 AMENDMENT TO SENATE BILL 1332

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

5 "Section 5. The Juvenile Court Act of 1987 is amended by  
6 changing Section 5-401.5 as follows:

7 (705 ILCS 405/5-401.5)

8 Sec. 5-401.5. When statements by minor may be used.

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

14 In this Section, "electronic recording" includes motion  
15 picture, audiotape, videotape, or digital recording.

16 In this Section, "place of detention" means a building or a

1 police station that is a place of operation for a municipal  
2 police department or county sheriff department or other law  
3 enforcement agency at which persons are or may be held in  
4 detention in connection with criminal charges against those  
5 persons or allegations that those persons are delinquent  
6 minors.

7 (b) An oral, written, or sign language statement of a minor  
8 who, at the time of the commission of the offense was under the  
9 age of 17 years, made as a result of a custodial interrogation  
10 conducted at a police station or other place of detention on or  
11 after the effective date of this amendatory Act of the 93rd  
12 General Assembly shall be presumed to be inadmissible as  
13 evidence against the minor in any criminal proceeding or  
14 juvenile court proceeding, for an act that if committed by an  
15 adult would be brought under Section 9-1, 9-1.2, 9-2, 9-2.1,  
16 9-3, 9-3.2, ~~or~~ 9-3.3, 11-1.30, 11-1.40, 18-2, 18-4, or 19-6 or  
17 subsection (e) of Section 12-3.05 of the Criminal Code of 1961  
18 or the Criminal Code of 2012, or under clause (d)(1)(F) of  
19 Section 11-501 of the Illinois Vehicle Code unless:

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

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

24 (b-1) Unless the court has granted a pretrial motion to  
25 suppress the contents of an electronically recorded custodial  
26 interrogation, an electronic recording made of an accused for

1 any offense may be admissible as evidence against the accused  
2 in any criminal proceeding provided:

3 (1) the recording was made while the accused was in  
4 custody for a violation of Section 9-1, 9-1.2, 9-2, 9-2.1,  
5 9-3, 9-3.2, 9-3.3, 11-1.30, 11-1.40, 18-2, 18-4, or 19-6 or  
6 subsection (e) of Section 12-3.05 of the Criminal Code of  
7 1961 or the Criminal Code of 2012 or under clause (d) (1) (F)  
8 of Section 11-501 of the Illinois Vehicle Code;

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

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

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

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

1 (e) Nothing in this Section precludes the admission (i) of  
2 a statement made by the minor in open court in any criminal  
3 proceeding or juvenile court proceeding, before a grand jury,  
4 or at a preliminary hearing, (ii) of a statement made during a  
5 custodial interrogation that was not recorded as required by  
6 this Section because electronic recording was not feasible,  
7 (iii) of a voluntary statement, whether or not the result of a  
8 custodial interrogation, that has a bearing on the credibility  
9 of the accused as a witness, (iv) of a spontaneous statement  
10 that is not made in response to a question, (v) of a statement  
11 made after questioning that is routinely asked during the  
12 processing of the arrest of the suspect, (vi) of a statement  
13 made during a custodial interrogation by a suspect who  
14 requests, prior to making the statement, to respond to the  
15 interrogator's questions only if an electronic recording is not  
16 made of the statement, provided that an electronic recording is  
17 made of the statement of agreeing to respond to the  
18 interrogator's question, only if a recording is not made of the  
19 statement, (vii) of a statement made during a custodial  
20 interrogation that is conducted out-of-state, (viii) of a  
21 statement given at a time when the interrogators are unaware  
22 that the act, if committed by an adult could be brought under  
23 Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, 9-3.3, 11-1.30,  
24 11-1.40, 18-2, 18-4, or 19-6 or subsection (e) of Section  
25 12-3.05 of the Criminal Code of 1961 or the Criminal Code of  
26 2012, or under clause (d)(1)(F) of Section 11-501 of the

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

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

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

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

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

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

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

10 (725 ILCS 5/103-2.1)

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

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

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

24 In this Section, "electronic recording" includes motion

1 picture, audiotape, or videotape, or digital recording.

2 (b) An oral, written, or sign language statement of an  
3 accused made as a result of a custodial interrogation at a  
4 police station or other place of detention shall be presumed to  
5 be inadmissible as evidence against the accused in any criminal  
6 proceeding brought under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3,  
7 9-3.2, ~~or~~ 9-3.3, 11-1.30, 11-1.40, 18-2, 18-4, or 19-6 or  
8 subsection (e) of Section 12-3.05 of the Criminal Code of 1961  
9 or the Criminal Code of 2012 or under clause (d) (1) (F) of  
10 Section 11-501 of the Illinois Vehicle Code 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) Unless the court has granted a pretrial motion to  
16 suppress the contents of an electronically recorded custodial  
17 interrogation, an electronic recording made of an accused for  
18 any offense may be admissible as evidence against the accused  
19 in any criminal proceeding provided:

20 (1) the recording was made while the accused was in  
21 custody for a violation of Section 9-1, 9-1.2, 9-2, 9-2.1,  
22 9-3, 9-3.2, 9-3.3, 11-1.30, 11-1.40, 18-2, 18-4, or 19-6 or  
23 subsection (e) of Section 12-3.05 of the Criminal Code of  
24 1961 or the Criminal Code of 2012 or under clause (d) (1) (F)  
25 of Section 11-501 of the Illinois Vehicle Code;

26 (2) the recording was made as a result of a custodial

1 interrogation at a police station or other place of  
2 detention; and

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

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

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

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

1 a question, (v) of a statement made after questioning that is  
2 routinely asked during the processing of the arrest of the  
3 suspect, (vi) of a statement made during a custodial  
4 interrogation by a suspect who requests, prior to making the  
5 statement, to respond to the interrogator's questions only if  
6 an electronic recording is not made of the statement, provided  
7 that an electronic recording is made of the statement of  
8 agreeing to respond to the interrogator's question, only if a  
9 recording is not made of the statement, (vii) of a statement  
10 made during a custodial interrogation that is conducted  
11 out-of-state, (viii) of a statement given at a time when the  
12 interrogators are unaware that the offense could be charged  
13 under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, 9-3.3,  
14 11-1.30, 11-1.40, 18-2, 18-4, or 19-6 or subsection (e) of  
15 Section 12-3.05 of the Criminal Code of 1961 or the Criminal  
16 Code of 2012, or under clause (d)(1)(F) of Section 11-501 of  
17 the Illinois Vehicle Code ~~a death has in fact occurred~~, or (ix)  
18 of any other statement that may be admissible under law. The  
19 State shall bear the burden of proving, by a preponderance of  
20 the evidence, that one of the exceptions described in this  
21 subsection (e) is applicable. Nothing in this Section precludes  
22 the admission of a statement, otherwise inadmissible under this  
23 Section, that is used only for impeachment and not as  
24 substantive evidence.

25 (f) The presumption of inadmissibility of a statement made  
26 by a suspect at a custodial interrogation at a police station

1 or other place of detention may be overcome by a preponderance  
2 of the evidence that the statement was voluntarily given and is  
3 reliable, based on the totality of the circumstances.

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

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