

SB1825



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB1825

Introduced 2/26/2021, by Sen. Patricia Van Pelt

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-170
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 a minor who was under 18 at the time of the commission of any offense (currently, specified offenses), including criminal proceedings under the Criminal Code of 2012, must be represented by counsel throughout the entire custodial interrogation. Provides that an oral, written, or sign language statement of a minor made without counsel present throughout the entire custodial interrogation of the minor shall be inadmissible as evidence in any juvenile court proceeding or criminal proceeding against the minor.

LRB102 15353 KMF 20713 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

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 Sections 5-170 and 5-401.5 as follows:

6 (705 ILCS 405/5-170)

7 Sec. 5-170. Representation by counsel.

8 (a) In a proceeding under this Article, a minor who was
9 under 18 ~~15~~ years of age at the time of the commission of any
10 offense ~~an act that if committed by an adult would be a~~
11 ~~violation of Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2,~~
12 ~~9-3.3, 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-13,~~
13 ~~12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 or~~
14 ~~the Criminal Code of 2012~~ must be represented by counsel
15 throughout the entire custodial interrogation of the minor.

16 (b) In a judicial proceeding under this Article, a minor
17 may not waive the right to the assistance of counsel in his or
18 her defense.

19 (Source: P.A. 99-882, eff. 1-1-17.)

20 (705 ILCS 405/5-401.5)

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

22 (a) In this Section, "custodial interrogation" means any

1 interrogation (i) during which a reasonable person in the
2 subject's position would consider himself or herself to be in
3 custody and (ii) during which a question is asked that is
4 reasonably likely to elicit an incriminating response.

5 In this Section, "electronic recording" includes motion
6 picture, audiotape, videotape, or digital recording.

7 In this Section, "place of detention" means a building or
8 a police station that is a place of operation for a municipal
9 police department or county sheriff department or other law
10 enforcement agency at which persons are or may be held in
11 detention in connection with criminal charges against those
12 persons or allegations that those persons are delinquent
13 minors.

14 (a-5) An oral, written, or sign language statement of a
15 minor, who at the time of the commission of the offense was
16 under 18 years of age, is presumed to be inadmissible when the
17 statement is obtained from the minor while the minor is
18 subject to custodial interrogation by a law enforcement
19 officer, State's Attorney, juvenile officer, or other public
20 official or employee prior to the officer, State's Attorney,
21 public official, or employee:

22 (1) continuously reads to the minor, in its entirety
23 and without stopping for purposes of a response from the
24 minor or verifying comprehension, the following statement:
25 "You have the right to remain silent. That means you do not
26 have to say anything. Anything you do say can be used

1 against you in court. You have the right to get help from a
2 lawyer. If you cannot pay for a lawyer, the court will get
3 you one for free. You can ask for a lawyer at any time. You
4 have the right to stop this interview at any time."; and

5 (2) after reading the statement required by paragraph
6 (1) of this subsection (a-5), the public official or
7 employee shall ask the minor the following questions and
8 wait for the minor's response to each question:

9 (A) "Do you want to have a lawyer?"

10 (B) "Do you want to talk to me?"

11 (b) An oral, written, or sign language statement of a
12 minor who, at the time of the commission of the offense was
13 under the age of 18 years, made as a result of a custodial
14 interrogation conducted at a police station or other place of
15 detention on or after the effective date of this amendatory
16 Act of the 99th General Assembly shall be presumed to be
17 inadmissible as evidence against the minor in any criminal
18 proceeding or juvenile court proceeding, for an act that if
19 committed by an adult would be a misdemeanor offense under
20 Article 11 of the Criminal Code of 2012 or any felony offense
21 unless:

22 (1) an electronic recording is made of the custodial
23 interrogation; and

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

26 (b-5) (Blank).

1 (b-10) If, during the course of an electronically recorded
2 custodial interrogation conducted under this Section of a
3 minor who, at the time of the commission of the offense was
4 under the age of 18 years, the minor makes a statement that
5 creates a reasonable suspicion to believe the minor has
6 committed an act that if committed by an adult would be an
7 offense other than an offense required to be recorded under
8 subsection (b), the interrogators may, without the minor's
9 consent, continue to record the interrogation as it relates to
10 the other offense notwithstanding any provision of law to the
11 contrary. Any oral, written, or sign language statement of a
12 minor made as a result of an interrogation under this
13 subsection shall be presumed to be inadmissible as evidence
14 against the minor in any criminal proceeding or juvenile court
15 proceeding, unless the recording is substantially accurate and
16 not intentionally altered.

17 (c) Every electronic recording made under this Section
18 must be preserved until such time as the minor's adjudication
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
23 evidence, that the minor was subjected to a custodial
24 interrogation in violation of this Section, then any
25 statements made by the minor during or following that
26 non-recorded custodial interrogation, even if otherwise in

1 compliance with this Section, are presumed to be inadmissible
2 in any criminal proceeding or juvenile court proceeding
3 against the minor except for the purposes of impeachment.

4 (d-5) An oral, written, or sign language statement of a
5 minor made without counsel present throughout the entire
6 custodial interrogation of the minor shall be inadmissible as
7 evidence against the minor in any juvenile court proceeding or
8 criminal proceeding.

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

1 of the statement, (vii) of a statement made during a custodial
2 interrogation that is conducted out-of-state, (viii) of a
3 statement given in violation of subsection (b) at a time when
4 the interrogators are unaware that a death has in fact
5 occurred, (ix) (blank), or (x) of any other statement that may
6 be admissible under law. The State shall bear the burden of
7 proving, by a preponderance of the evidence, that one of the
8 exceptions described in this subsection (e) is applicable.
9 Nothing in this Section precludes the admission of a
10 statement, otherwise inadmissible under this Section, that is
11 used only for impeachment and not as substantive evidence.

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

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

25 (h) A statement, admission, confession, or incriminating
26 information made by or obtained from a minor related to the

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

10 (i) The changes made to this Section by Public Act 98-61
11 apply to statements of a minor made on or after January 1, 2014
12 (the effective date of Public Act 98-61).

13 (Source: P.A. 98-61, eff. 1-1-14; 98-547, eff. 1-1-14; 98-756,
14 eff. 7-16-14; 99-882, eff. 1-1-17.)

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

17 (725 ILCS 5/103-2.1)

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

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

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

1 a police station that is a place of operation for a municipal
2 police department or county sheriff department or other law
3 enforcement agency, not a courthouse, that is owned or
4 operated by a law enforcement agency at which persons are or
5 may be held in detention in connection with criminal charges
6 against those persons.

7 In this Section, "electronic recording" includes motion
8 picture, audiotape, or videotape, or digital recording.

9 (a-5) An oral, written, or sign language statement of a
10 minor, who at the time of the commission of the offense was
11 under 18 years of age, is presumed to be inadmissible when the
12 statement is obtained from the minor while the minor is
13 subject to custodial interrogation by a law enforcement
14 officer, State's Attorney, juvenile officer, or other public
15 official or employee prior to the officer, State's Attorney,
16 public official, or employee:

17 (1) continuously reads to the minor, in its entirety
18 and without stopping for purposes of a response from the
19 minor or verifying comprehension, the following statement:
20 "You have the right to remain silent. That means you do not
21 have to say anything. Anything you do say can be used
22 against you in court. You have the right to get help from a
23 lawyer. If you cannot pay for a lawyer, the court will get
24 you one for free. You can ask for a lawyer at any time. You
25 have the right to stop this interview at any time."; and

26 (2) after reading the statement required by paragraph

1 (1) of this subsection (a-5), the public official or
2 employee shall ask the minor the following questions and
3 wait for the minor's response to each question:

4 (A) "Do you want to have a lawyer?"

5 (B) "Do you want to talk to me?"

6 (a-10) An oral, written, or sign language statement of a
7 minor, who at the time of the commission of the offense was
8 under 18 years of age, made as a result of a custodial
9 interrogation conducted at a police station or other place of
10 detention on or after the effective date of this amendatory
11 Act of the 99th General Assembly shall be presumed to be
12 inadmissible as evidence in a criminal proceeding or a
13 juvenile court proceeding for an act that if committed by an
14 adult would be a misdemeanor offense under Article 11 of the
15 Criminal Code of 2012 or a felony offense under the Criminal
16 Code of 2012 unless:

17 (1) an electronic recording is made of the custodial
18 interrogation; and

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

21 (b) An oral, written, or sign language statement of an
22 accused made as a result of a custodial interrogation
23 conducted at a police station or other place of detention
24 shall be presumed to be inadmissible as evidence against the
25 accused in any criminal proceeding brought under Section 9-1,
26 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of

1 1961 or the Criminal Code of 2012 or under clause (d) (1) (F) of
2 Section 11-501 of the Illinois Vehicle Code unless:

3 (1) an electronic recording is made of the custodial
4 interrogation; and

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

7 (b-5) Under the following circumstances, an oral, written,
8 or sign language statement of an accused made as a result of a
9 custodial interrogation conducted at a police station or other
10 place of detention shall be presumed to be inadmissible as
11 evidence against the accused, unless an electronic recording
12 is made of the custodial interrogation and the recording is
13 substantially accurate and not intentionally altered:

14 (1) in any criminal proceeding brought under Section
15 11-1.40 or 20-1.1 of the Criminal Code of 1961 or the
16 Criminal Code of 2012, if the custodial interrogation was
17 conducted on or after June 1, 2014;

18 (2) in any criminal proceeding brought under Section
19 10-2, 18-4, or 19-6 of the Criminal Code of 1961 or the
20 Criminal Code of 2012, if the custodial interrogation was
21 conducted on or after June 1, 2015; and

22 (3) in any criminal proceeding brought under Section
23 11-1.30 or 18-2 or subsection (e) of Section 12-3.05 of
24 the Criminal Code of 1961 or the Criminal Code of 2012, if
25 the custodial interrogation was conducted on or after June
26 1, 2016.

1 (b-10) If, during the course of an electronically recorded
2 custodial interrogation conducted under this Section, the
3 accused makes a statement that creates a reasonable suspicion
4 to believe the accused has committed an offense other than an
5 offense required to be recorded under subsection (b) or (b-5),
6 the interrogators may, without the accused's consent, continue
7 to record the interrogation as it relates to the other offense
8 notwithstanding any provision of law to the contrary. Any
9 oral, written, or sign language statement of an accused made
10 as a result of an interrogation under this subsection shall be
11 presumed to be inadmissible as evidence against the accused in
12 any criminal proceeding, unless the recording is substantially
13 accurate and not intentionally altered.

14 (b-15) In a criminal proceeding brought under the Criminal
15 Code of 2012, a minor who was under 18 years of age at the time
16 of the commission of the offense must be represented by
17 counsel throughout the entire custodial interrogation of the
18 minor.

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

24 (d) If the court finds, by a preponderance of the
25 evidence, that the defendant was subjected to a custodial
26 interrogation in violation of this Section, then any

1 statements made by the defendant during or following that
2 non-recorded custodial interrogation, even if otherwise in
3 compliance with this Section, are presumed to be inadmissible
4 in any criminal proceeding against the defendant except for
5 the purposes of impeachment.

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

1 that a death has in fact occurred, (ix) of a statement given in
2 violation of subsection (b-5) at a time when the interrogators
3 are unaware of facts and circumstances that would create
4 probable cause to believe that the accused committed an
5 offense required to be recorded under subsection (b-5), or (x)
6 of any other statement that may be admissible under law. The
7 State shall bear the burden of proving, by a preponderance of
8 the evidence, that one of the exceptions described in this
9 subsection (e) is applicable. Nothing in this Section
10 precludes the admission of a statement, otherwise inadmissible
11 under this Section, that is used only for impeachment and not
12 as substantive evidence.

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

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

26 (Source: P.A. 98-547, eff. 1-1-14; 99-882, eff. 1-1-17.)