



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB1914

Introduced 2/15/2013, by Sen. Kwame Raoul

SYNOPSIS AS INTRODUCED:

725 ILCS 5/103-2.1

Amends the Code of Criminal Procedure of 1963. Provides an electronic recording made of an accused for any offense may be admissible as evidence against the accused in any criminal proceeding, if the recording was made in a custodial interrogation while the accused is in custody for a murder, homicide, second degree murder, involuntary manslaughter, reckless homicide, or aggravated DUI resulting in a death. Additionally, the recording must be substantially accurate and not intentionally altered.

LRB098 06255 MRW 36296 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 the Criminal
5 Code of 2012 or under clause (d) (1) (F) of Section 11-501 of the
6 Illinois Vehicle Code 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 electronic recording made of an accused for any
12 offense may be admissible as evidence against the accused in
13 any criminal proceeding provided:

14 (1) the recording was made while the accused was in
15 custody for a violation of Section 9-1, 9-1.2, 9-2, 9-2.1,
16 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961 or the
17 Criminal Code of 2012 or under clause (d) (1) (F) of Section
18 11-501 of the Illinois Vehicle Code;

19 (2) the recording was made as a result of a custodial
20 interrogation at a police station or other place of
21 detention;

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

24 (c) Every electronic recording required under this Section
25 must be preserved until such time as the defendant's conviction
26 for any offense relating to the statement is final and all

1 direct and habeas corpus appeals are exhausted, or the
2 prosecution of such offenses is barred by law.

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

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

1 agreeing to respond to the interrogator's question, only if a
2 recording is not made of the statement, (vii) of a statement
3 made during a custodial interrogation that is conducted
4 out-of-state, (viii) of a statement given at a time when the
5 interrogators are unaware that a death has in fact occurred, or
6 (ix) of any other statement that may be admissible under law.
7 The State shall bear the burden of proving, by a preponderance
8 of the evidence, that one of the exceptions described in this
9 subsection (e) is applicable. Nothing in this Section precludes
10 the admission of a statement, otherwise inadmissible under this
11 Section, that is used only for impeachment and not as
12 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 is
17 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. 97-1150, eff. 1-25-13.)