

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 Counties Code is amended by changing Section  
5 3-4006 as follows:

6 (55 ILCS 5/3-4006) (from Ch. 34, par. 3-4006)

7 Sec. 3-4006. Duties of public defender. The Public  
8 Defender, as directed by the court, shall act as attorney,  
9 without fee, before any court within any county for all persons  
10 who are held in custody or who are charged with the commission  
11 of any criminal offense, and who the court finds are unable to  
12 employ counsel.

13 The Public Defender shall be the attorney, without fee,  
14 when so appointed by the court under Section 1-20 of the  
15 Juvenile Court Act or Section 1-5 of the Juvenile Court Act of  
16 1987 or by any court under Section 5(b) of the Parental Notice  
17 of Abortion Act of 1983 for any party who the court finds is  
18 financially unable to employ counsel.

19 In cases subject to Section 5-170 of the Juvenile Court Act  
20 of 1987 involving a minor who was under 15 years of age at the  
21 time of the commission of the offense, that occurs in a county  
22 with a full-time public defender office, a public defender,  
23 without fee or appointment, may represent and have access to a

1 minor during a custodial interrogation. In cases subject to  
2 Section 5-170 of the Juvenile Court Act of 1987 involving a  
3 minor who was under 15 years of age at the time of the  
4 commission of the offense, that occurs in a county without a  
5 full-time public defender, the law enforcement agency  
6 conducting the custodial interrogation shall ensure that the  
7 minor is able to consult with an attorney who is under contract  
8 with the county to provide public defender services.  
9 Representation by the public defender shall terminate at the  
10 first court appearance if the court determines that the minor  
11 is not indigent.

12 Every court shall, with the consent of the defendant and  
13 where the court finds that the rights of the defendant would be  
14 prejudiced by the appointment of the public defender, appoint  
15 counsel other than the public defender, except as otherwise  
16 provided in Section 113-3 of the "Code of Criminal Procedure of  
17 1963". That counsel shall be compensated as is provided by law.  
18 He shall also, in the case of the conviction of any such  
19 person, prosecute any proceeding in review which in his  
20 judgment the interests of justice require.

21 (Source: P.A. 86-962.)

22 Section 10. The Juvenile Court Act of 1987 is amended by  
23 changing Sections 5-170 and 5-401.5 as follows:

24 (705 ILCS 405/5-170)

1           Sec. 5-170. Representation by counsel.

2           (a) In a proceeding under this Article, a minor who was  
3 under 15 ~~13~~ years of age at the time of the commission of an act  
4 that if committed by an adult would be a violation of Section  
5 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, 9-3.3, 11-1.20, 11-1.30,  
6 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15, or  
7 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012  
8 must be represented by counsel throughout ~~during~~ the entire  
9 custodial interrogation of the minor.

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

13           (Source: P.A. 96-1551, eff. 7-1-11; 97-1150, eff. 1-25-13.)

14           (705 ILCS 405/5-401.5)

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

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

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

23           In this Section, "place of detention" means a building or a  
24 police station that is a place of operation for a municipal  
25 police department or county sheriff department or other law

1 enforcement agency at which persons are or may be held in  
2 detention in connection with criminal charges against those  
3 persons or allegations that those persons are delinquent  
4 minors.

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

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

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

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

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

2           (b) An oral, written, or sign language statement of a minor  
3 who, at the time of the commission of the offense was under the  
4 age of 18 years, made as a result of a custodial interrogation  
5 conducted at a police station or other place of detention on or  
6 after the effective date of this amendatory Act of the 99th  
7 ~~93rd~~ General Assembly shall be presumed to be inadmissible as  
8 evidence against the minor in any criminal proceeding or  
9 juvenile court proceeding, for an act that if committed by an  
10 adult would be a misdemeanor offense under Article 11 of the  
11 Criminal Code of 2012 or any felony offense brought under  
12 ~~Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3, of the~~  
13 ~~Criminal Code of 1961 or the Criminal Code of 2012, or under~~  
14 ~~clause (d) (1) (F) of Section 11-501 of the Illinois Vehicle Code~~  
15 unless:

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

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

20           (b-5) (Blank). ~~Under the following circumstances, an oral,~~  
21 ~~written, or sign language statement of a minor who, at the time~~  
22 ~~of the commission of the offense was under the age of 17 years,~~  
23 ~~made as a result of a custodial interrogation conducted at a~~  
24 ~~police station or other place of detention shall be presumed to~~  
25 ~~be inadmissible as evidence against the minor, unless an~~  
26 ~~electronic recording is made of the custodial interrogation and~~

1 ~~the recording is substantially accurate and not intentionally~~  
2 ~~altered;~~

3 ~~(1) in any criminal proceeding or juvenile court~~  
4 ~~proceeding, for an act that if committed by an adult would~~  
5 ~~be brought under Section 11 1.40 or 20 1.1 of the Criminal~~  
6 ~~Code of 1961 or the Criminal Code of 2012, if the custodial~~  
7 ~~interrogation was conducted on or after June 1, 2014;~~

8 ~~(2) in any criminal proceeding or juvenile court~~  
9 ~~proceeding, for an act that if committed by an adult would~~  
10 ~~be brought under Section 10 2, 18 4, or 19 6 of the~~  
11 ~~Criminal Code of 1961 or the Criminal Code of 2012, if the~~  
12 ~~custodial interrogation was conducted on or after June 1,~~  
13 ~~2015; and~~

14 ~~(3) in any criminal proceeding or juvenile court~~  
15 ~~proceeding, for an act that if committed by an adult would~~  
16 ~~be brought under Section 11 1.30 or 18 2 or subsection (e)~~  
17 ~~of Section 12 3.05 of the Criminal Code of 1961 or the~~  
18 ~~Criminal Code of 2012, if the custodial interrogation was~~  
19 ~~conducted on or after June 1, 2016.~~

20 (b-10) If, during the course of an electronically recorded  
21 custodial interrogation conducted under this Section of a minor  
22 who, at the time of the commission of the offense was under the  
23 age of 18 ~~17~~ years, the minor makes a statement that creates a  
24 reasonable suspicion to believe the minor has committed an act  
25 that if committed by an adult would be an offense other than an  
26 offense required to be recorded under subsection (b) ~~or (b 5)~~,

1 the interrogators may, without the minor's consent, continue to  
2 record the interrogation as it relates to the other offense  
3 notwithstanding any provision of law to the contrary. Any oral,  
4 written, or sign language statement of a minor made as a result  
5 of an interrogation under this subsection shall be presumed to  
6 be inadmissible as evidence against the minor in any criminal  
7 proceeding or juvenile court proceeding, unless the recording  
8 is substantially accurate and not intentionally altered.

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

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

22 (e) Nothing in this Section precludes the admission (i) of  
23 a statement made by the minor in open court in any criminal  
24 proceeding or juvenile court proceeding, before a grand jury,  
25 or at a preliminary hearing, (ii) of a statement made during a  
26 custodial interrogation that was not recorded as required by

1 this Section because electronic recording was not feasible,  
2 (iii) of a voluntary statement, whether or not the result of a  
3 custodial interrogation, that has a bearing on the credibility  
4 of the accused as a witness, (iv) of a spontaneous statement  
5 that is not made in response to a question, (v) of a statement  
6 made after questioning that is routinely asked during the  
7 processing of the arrest of the suspect, (vi) of a statement  
8 made during a custodial interrogation by a suspect who  
9 requests, prior to making the statement, to respond to the  
10 interrogator's questions only if an electronic recording is not  
11 made of the statement, provided that an electronic recording is  
12 made of the statement of agreeing to respond to the  
13 interrogator's question, only if a recording is not made of the  
14 statement, (vii) of a statement made during a custodial  
15 interrogation that is conducted out-of-state, (viii) of a  
16 statement given in violation of subsection (b) at a time when  
17 the interrogators are unaware that a death has in fact  
18 occurred, (ix) (blank) ~~of a statement given in violation of~~  
19 ~~subsection (b 5) at a time when the interrogators are unaware~~  
20 ~~of facts and circumstances that would create probable cause to~~  
21 ~~believe that the minor committed an act that if committed by an~~  
22 ~~adult would be an offense required to be recorded under~~  
23 ~~subsection (b 5),~~ or (x) of any other statement that may be  
24 admissible under law. The State shall bear the burden of  
25 proving, by a preponderance of the evidence, that one of the  
26 exceptions described in this subsection (e) is applicable.



1 Nothing in this Section precludes the admission of a statement,  
2 otherwise inadmissible under this Section, that is used only  
3 for impeachment and not as substantive evidence.

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

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

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

1 screening, assessment, or treatment.

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

5 (Source: P.A. 97-1150, eff. 1-25-13; 98-61, eff. 1-1-14;  
6 98-547, eff. 1-1-14; 98-756, eff. 7-16-14.)

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

9 (725 ILCS 5/103-2.1)

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

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

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

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

1       (a-5) An oral, written, or sign language statement of a  
2 minor, who at the time of the commission of the offense was  
3 under 18 years of age, is presumed to be inadmissible when the  
4 statement is obtained from the minor while the minor is subject  
5 to custodial interrogation by a law enforcement officer,  
6 State's Attorney, juvenile officer, or other public official or  
7 employee prior to the officer, State's Attorney, public  
8 official, or employee:

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

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

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

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

24       (a-10) An oral, written, or sign language statement of a  
25 minor, who at the time of the commission of the offense was  
26 under 18 years of age, made as a result of a custodial

1 interrogation conducted at a police station or other place of  
2 detention on or after the effective date of this amendatory Act  
3 of the 99th General Assembly shall be presumed to be  
4 inadmissible as evidence in a criminal proceeding or a juvenile  
5 court proceeding for an act that if committed by an adult would  
6 be a misdemeanor offense under Article 11 of the Criminal Code  
7 of 2012 or a felony offense under the Criminal Code of 2012  
8 unless:

9 (1) an electronic recording is made of the custodial  
10 interrogation; and

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

13 (b) An oral, written, or sign language statement of an  
14 accused made as a result of a custodial interrogation conducted  
15 at a police station or other place of detention shall be  
16 presumed to be inadmissible as evidence against the accused in  
17 any criminal proceeding brought under Section 9-1, 9-1.2, 9-2,  
18 9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961 or the  
19 Criminal Code of 2012 or under clause (d)(1)(F) of Section  
20 11-501 of the Illinois Vehicle Code unless:

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

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

25 (b-5) Under the following circumstances, an oral, written,  
26 or sign language statement of an accused made as a result of a

1 custodial interrogation conducted at a police station or other  
2 place of detention shall be presumed to be inadmissible as  
3 evidence against the accused, unless an electronic recording is  
4 made of the custodial interrogation and the recording is  
5 substantially accurate and not intentionally altered:

6 (1) in any criminal proceeding brought under Section  
7 11-1.40 or 20-1.1 of the Criminal Code of 1961 or the  
8 Criminal Code of 2012, if the custodial interrogation was  
9 conducted on or after June 1, 2014;

10 (2) in any criminal proceeding brought under Section  
11 10-2, 18-4, or 19-6 of the Criminal Code of 1961 or the  
12 Criminal Code of 2012, if the custodial interrogation was  
13 conducted on or after June 1, 2015; and

14 (3) in any criminal proceeding brought under Section  
15 11-1.30 or 18-2 or subsection (e) of Section 12-3.05 of the  
16 Criminal Code of 1961 or the Criminal Code of 2012, if the  
17 custodial interrogation was conducted on or after June 1,  
18 2016.

19 (b-10) If, during the course of an electronically recorded  
20 custodial interrogation conducted under this Section, the  
21 accused makes a statement that creates a reasonable suspicion  
22 to believe the accused has committed an offense other than an  
23 offense required to be recorded under subsection (b) or (b-5),  
24 the interrogators may, without the accused's consent, continue  
25 to record the interrogation as it relates to the other offense  
26 notwithstanding any provision of law to the contrary. Any oral,

1 written, or sign language statement of an accused made as a  
2 result of an interrogation under this subsection shall be  
3 presumed to be inadmissible as evidence against the accused in  
4 any criminal proceeding, unless the recording is substantially  
5 accurate and not intentionally altered.

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

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

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

1 (iv) of a spontaneous statement that is not made in response to  
2 a question, (v) of a statement made after questioning that is  
3 routinely asked during the processing of the arrest of the  
4 suspect, (vi) of a statement made during a custodial  
5 interrogation by a suspect who requests, prior to making the  
6 statement, to respond to the interrogator's questions only if  
7 an electronic recording is not made of the statement, provided  
8 that an electronic recording is made of the statement of  
9 agreeing to respond to the interrogator's question, only if a  
10 recording is not made of the statement, (vii) of a statement  
11 made during a custodial interrogation that is conducted  
12 out-of-state, (viii) of a statement given in violation of  
13 subsection (b) at a time when the interrogators are unaware  
14 that a death has in fact occurred, (ix) of a statement given in  
15 violation of subsection (b-5) at a time when the interrogators  
16 are unaware of facts and circumstances that would create  
17 probable cause to believe that the accused committed an offense  
18 required to be recorded under subsection (b-5), or (x) of any  
19 other statement that may be admissible under law. The State  
20 shall bear the burden of proving, by a preponderance of the  
21 evidence, that one of the exceptions described in this  
22 subsection (e) is applicable. Nothing in this Section precludes  
23 the admission of a statement, otherwise inadmissible under this  
24 Section, that is used only for impeachment and not as  
25 substantive evidence.

26 (f) The presumption of inadmissibility of a statement made

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

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

13 (Source: P.A. 97-1150, eff. 1-25-13; 98-547, eff. 1-1-14.)