

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 725. Criminal Procedure
Act 5. Code of Criminal Procedure of 1963 (Refs & Annos)
Title I. General Provisions
Article 103. Rights of Accused (Refs & Annos)

725 ILCS 5/103-2.1

5/103-2.1. When statements by accused may be used

Effective: January 1, 2014

[Currentness](#)

§ 103-2.1. When statements by accused may be used.

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

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

In this Section, “electronic recording” includes motion picture, audiotape, or videotape, or digital recording.

(b) An oral, written, or sign language statement of an accused made as a result of a custodial interrogation conducted at a police station or other place of detention shall be presumed to be inadmissible as evidence against the accused in any criminal proceeding brought under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961 or the Criminal Code of 2012¹ or under clause (d)(1)(F) of Section 11-501 of the Illinois Vehicle Code unless:

- (1) an electronic recording is made of the custodial interrogation; and
- (2) the recording is substantially accurate and not intentionally altered.

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

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

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

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

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

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

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

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

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

interrogator's question, only if a recording is not made of the statement, (vii) of a statement made during a custodial interrogation that is conducted out-of-state, (viii) of a statement given in violation of subsection (b) at a time when the interrogators are unaware that a death has in fact occurred, (ix) of a statement given in violation of subsection (b-5) at a time when the interrogators are unaware of facts and circumstances that would create probable cause to believe that the accused committed an offense required to be recorded under subsection (b-5), or (x) of any other statement that may be admissible under law. The State shall bear the burden of proving, by a preponderance of the evidence, that one of the exceptions described in this subsection (e) is applicable. Nothing in this Section precludes the admission of a statement, otherwise inadmissible under this Section, that is used only for impeachment and not as substantive evidence.

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

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

Credits

Laws 1963, p. 2836, § 103-2.1, added by P.A. 93-206, § 25, eff. July 18, 2005; P.A. 93-517, § 25, eff. Aug. 6, 2005. Amended by P.A. 94-117, § 10, eff. July 5, 2005; P.A. 97-1150, § 635, eff. Jan. 25, 2013; P.A. 98-547, § 10, eff. Jan. 1, 2014.

DATE EFFECTIVE

<Section 99 of both P.A. 93-206 and P.A. 93-517 provided:>

<“Effective date. Sections 5, 10, 20, and 95 of this Act and this Section 99 take effect upon becoming law. Sections 15 and 25 of this Act take effect 2 years after becoming law.”>

<P.A. 93-206 became effective July 18, 2003, and P.A. 93-517 became effective August 6, 2003.>

Notes of Decisions (15)

Footnotes

1

720 ILCS 5/9-1, 5/9-1.2, 5/9-2, 5/9-2.1, 5/9-3, 5/9-3.2, or 5/9-3.3.

2

[5 ILCS 140/7.](#)

725 I.L.C.S. 5/103-2.1, IL ST CH 725 § 5/103-2.1
Current through P.A. 98-1174 of the 2014 Reg. Sess.

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