

(PRE-FILED)

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By: **Delegate Arnick**  
Requested: July 13, 2004  
Introduced and read first time: January 12, 2005  
Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Custodial Interrogation - Capital Offenses -**  
3 **Electronic Recordation**

4 FOR the purpose of requiring a custodial interrogation in cases relating to a criminal  
5 investigation of a crime punishable by death to be electronically recorded except  
6 under certain circumstances; requiring a police officer to advise a certain  
7 individual of certain rights and warnings before a certain custodial  
8 interrogation; defining certain terms; providing for a delayed effective date; and  
9 generally relating to electronic recordings of custodial interrogations in cases  
10 relating to a criminal investigation of a crime punishable by death.

11 BY repealing and reenacting, with amendments,  
12 Article - Criminal Procedure  
13 Section 2-101  
14 Annotated Code of Maryland  
15 (2001 Volume and 2004 Supplement)

16 BY adding to  
17 Article - Criminal Procedure  
18 Section 2-401 to be under the new subtitle "Subtitle 4. Custodial Interrogation"  
19 Annotated Code of Maryland  
20 (2001 Volume and 2004 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article - Criminal Procedure**

24 2-101.

25 (a) In this title the following words have the meanings indicated.

26 (B) "CUSTODIAL INTERROGATION" MEANS AN INTERROGATION BY A POLICE  
27 OFFICER IN WHICH THE INDIVIDUAL BEING INTERROGATED IS NOT FREE TO LEAVE

1 A PLACE OF DETENTION WHEN THE INDIVIDUAL IS ASKED A QUESTION THAT IS  
2 DESIGNED TO ELICIT AN INCRIMINATING RESPONSE.

3 [(b)] (C) "Emergency" means a sudden or unexpected happening or an  
4 unforeseen combination of circumstances that calls for immediate action to protect  
5 the health, safety, welfare, or property of a person from actual or threatened harm or  
6 from an unlawful act.

7 (D) "PLACE OF DETENTION" MEANS A FACILITY UNDER THE CONTROL OF:

8 (1) THE DEPARTMENT OF STATE POLICE;

9 (2) THE POLICE DEPARTMENT OF A COUNTY OR MUNICIPAL  
10 CORPORATION;

11 (3) A SHERIFF'S DEPARTMENT; OR

12 (4) ANY OTHER GOVERNMENTAL LAW ENFORCEMENT UNIT THAT HAS  
13 EMPLOYEES AUTHORIZED TO MAKE ARRESTS.

14 [(c)] (E) "Police officer" means a person who in an official capacity is  
15 authorized by law to make arrests and is:

16 (1) a member of the Department of State Police;

17 (2) a member of the Police Department of Baltimore City;

18 (3) a member of the Baltimore City School Police Force;

19 (4) a member of the police department, bureau, or force of a county;

20 (5) a member of the police department, bureau, or force of a municipal  
21 corporation;

22 (6) a member of the Maryland Transit Administration Police Force,  
23 Maryland Port Administration Police Force, or Maryland Transportation Authority  
24 Police Force;

25 (7) a member of the University of Maryland Police Force or Morgan State  
26 University Police Force;

27 (8) a special police officer who is appointed to enforce the law and  
28 maintain order on or protect property of the State or any of its units;

29 (9) a member of the Department of General Services security force;

30 (10) the sheriff of a county whose usual duties include the making of  
31 arrests;

32 (11) a regularly employed deputy sheriff of a county who is compensated  
33 by the county and whose usual duties include the making of arrests;

1 (12) a member of the Natural Resources Police Force of the Department of  
2 Natural Resources;

3 (13) an authorized employee of the Field Enforcement Division of the  
4 Comptroller's Office;

5 (14) a member of the Maryland-National Capital Park and Planning  
6 Commission Park Police;

7 (15) a member of the Housing Authority of Baltimore City Police Force;

8 (16) a member of the Crofton Police Department;

9 (17) a member of the WMATA Metro Transit Police, subject to the  
10 jurisdictional limitations under Article XVI, § 76 of the Washington Metropolitan  
11 Area Transit Authority Compact, which is codified at § 10-204 of the Transportation  
12 Article;

13 (18) a member of the Internal Investigative Unit of the Department;

14 (19) a member of the State Forest and Park Service Police Force of the  
15 Department of Natural Resources;

16 (20) a member of the Department of Labor, Licensing, and Regulation  
17 Police Force; or

18 (21) a member of the Washington Suburban Sanitary Commission Police  
19 Force.

20 SUBTITLE 4. CUSTODIAL INTERROGATION.

21 2-401.

22 (A) THIS SECTION APPLIES ONLY TO A CUSTODIAL INTERROGATION  
23 RELATING TO A CRIMINAL INVESTIGATION OF A CRIME PUNISHABLE BY DEATH.

24 (B) A CUSTODIAL INTERROGATION AND ANY ADVISEMENT OR WAIVER OF  
25 RIGHTS UNDER SUBSECTION (C) OF THIS SECTION SHALL BE ELECTRONICALLY  
26 RECORDED WHEN QUESTIONING OCCURS AT A PLACE OF DETENTION, UNLESS:

27 (1) THERE IS A LACK OF PROPER EQUIPMENT; OR

28 (2) TIME IS OF THE ESSENCE.

29 (C) SUBJECT TO SUBSECTION (B) OF THIS SECTION, BEFORE A CUSTODIAL  
30 INTERROGATION BEGINS, A POLICE OFFICER SHALL ADVISE THE INDIVIDUAL BEING  
31 QUESTIONED OF THE FOLLOWING RIGHTS AND WARNINGS:

32 (1) THE INDIVIDUAL HAS THE RIGHT TO REMAIN SILENT;

1           (2)     ANYTHING THE INDIVIDUAL SAYS MAY BE USED AGAINST THE  
2 INDIVIDUAL IN A COURT OF LAW;

3           (3)     THE INDIVIDUAL HAS THE RIGHT TO HAVE AN ATTORNEY AND TO  
4 HAVE THE ATTORNEY PRESENT WITH THE INDIVIDUAL DURING INTERROGATION;  
5 AND

6           (4)     IF THE INDIVIDUAL IS UNABLE TO AFFORD AN ATTORNEY, THE  
7 INDIVIDUAL HAS THE RIGHT TO HAVE AN ATTORNEY APPOINTED TO REPRESENT THE  
8 INDIVIDUAL.

9     SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 October 1, 2006.