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By: **Senator McFadden**
Introduced and read first time: January 31, 2005
Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2   **Criminal Procedure - Electronic Video and Audio Recording of Witnesses in**
3   **Murder and Manslaughter Investigations**

4 FOR the purpose of authorizing a State's Attorney to make electronic video and audio
5   recordings of certain witnesses to certain alleged crimes during questioning of
6   the witnesses under certain circumstances; establishing that certain statements
7   by certain witnesses are admissible as evidence against a defendant in a trial for
8   certain alleged crimes under certain circumstances; providing for the
9   construction of this Act; and generally relating to the recording of certain
10   witnesses to certain alleged crimes under certain circumstances.

11 BY adding to
12   Article - Courts and Judicial Proceedings
13   Section 9-501 to be under the new subtitle "Subtitle 5. Electronic Video and
14   Audio Recording of Witnesses"
15   Annotated Code of Maryland
16   (2002 Replacement Volume and 2004 Supplement)

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

19   **Article - Courts and Judicial Proceedings**

20   SUBTITLE 5. ELECTRONIC VIDEO AND AUDIO RECORDING OF WITNESSES.

21 9-501.

22   (A)   NOTHING IN THIS SECTION MAY BE CONSTRUED TO AFFECT OR LIMIT THE
23 RIGHT OF A WITNESS TO DECLINE TO GIVE EVIDENCE AGAINST OR OTHERWISE
24 SELF-INCRIMINATE THE WITNESS AS PROVIDED IN ARTICLE 22 OF THE MARYLAND
25 DECLARATION OF RIGHTS AND THE FIFTH AMENDMENT TO THE UNITED STATES
26 CONSTITUTION.

27   (B)   AS PART OF A STATE'S ATTORNEY'S INVESTIGATION OF AN ALLEGED
28 VIOLATION OF TITLE 2, SUBTITLE 2 OF THE CRIMINAL LAW ARTICLE, A STATE'S

1 ATTORNEY MAY MAKE AN ELECTRONIC VIDEO AND AUDIO RECORDING OF A
2 WITNESS TO THE ALLEGED OFFENSE DURING THE STATE'S ATTORNEY'S
3 QUESTIONING OF THE WITNESS.

4   (C)   AN ORAL, WRITTEN, OR SIGN LANGUAGE STATEMENT OF A WITNESS MADE
5 AS A RESULT OF QUESTIONING BY A STATE'S ATTORNEY AS PART OF THE STATE'S
6 ATTORNEY'S INVESTIGATION OF AN ALLEGED VIOLATION OF TITLE 2, SUBTITLE 2 OF
7 THE CRIMINAL LAW ARTICLE IS ADMISSIBLE AS EVIDENCE AGAINST A DEFENDANT
8 IN A TRIAL FOR AN ALLEGED VIOLATION OF TITLE 2, SUBTITLE 2 OF THE CRIMINAL
9 LAW ARTICLE IF:

10   (1)   AN ELECTRONIC VIDEO AND AUDIO RECORDING OF THE STATEMENT
11 IS MADE;

12   (2)   BEFORE THE QUESTIONING BUT DURING THE RECORDING, THE
13 WITNESS IS INFORMED BY THE STATE'S ATTORNEY THAT:

14   (I)   THE WITNESS HAS THE RIGHT TO REFUSE TO
15 SELF-INCRIMINATE THE WITNESS;

16   (II)   THE WITNESS HAS THE RIGHT TO REMAIN SILENT, BUT IF THE
17 WITNESS DOES NOT REMAIN SILENT ANY STATEMENT OR RESPONSES BY THE
18 WITNESS MAY BE USED AS EVIDENCE AGAINST THE WITNESS AT ANY CRIMINAL
19 TRIAL; AND

20   (III)   THE WITNESS HAS THE RIGHT TO HAVE AN ATTORNEY
21 PRESENT DURING THE QUESTIONING TO ADVISE THE WITNESS;

22   (3)   THE WITNESS MAKES AN OATH DURING THE RECORDING UNDER
23 THE PENALTY OF PERJURY THAT THE RESPONSES OF THE WITNESS ARE TRUTHFUL
24 AND ACCURATE;

25   (4)   AN ATTORNEY FROM THE OFFICE OF THE PUBLIC DEFENDER IS
26 PRESENT DURING THE QUESTIONING OF THE WITNESS BY THE STATE'S ATTORNEY
27 AND HAS AN OPPORTUNITY TO CROSS-EXAMINE OR IMPEACH THE CREDIBILITY OF
28 THE WITNESS THROUGH QUESTIONING THAT WILL BE RECORDED IN ORDER TO
29 PROTECT THE RIGHTS OF ANY POTENTIAL ALLEGED OFFENDER;

30   (5)   THE RECORDING IS ACCURATE AND HAS NOT BEEN ALTERED;

31   (6)   THE RECORDING IS PRESERVED AND MAINTAINED BY THE OFFICE
32 OF THE STATE'S ATTORNEY IN A DOCUMENTED CHAIN OF CUSTODY;

33   (7)   THE RECORDING IS MADE AVAILABLE TO A DEFENDANT AND LEGAL
34 COUNSEL TO THE DEFENDANT IF THE DEFENDANT IS CHARGED WITH AN ALLEGED
35 VIOLATION OF TITLE 2, SUBTITLE 2 OF THE CRIMINAL LAW ARTICLE; AND

36   (8)   THE WITNESS IS UNAVAILABLE TO TESTIFY AT THE TRIAL DUE TO:

37   (I)   THE DEATH OR INCAPACITY OF THE WITNESS; OR

1   (II)   THE ABSENCE OF THE WITNESS IF THE WITNESS CANNOT BE
2 REASONABLY LOCATED.

3   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2005.