

Department of Legislative Services  
 Maryland General Assembly  
 2005 Session

FISCAL AND POLICY NOTE

House Bill 46 (Delegate Arnick)  
 Judiciary

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

This bill requires a “custodial interrogation” in cases involving a capital offense that occurs at a “place of detention” to be electronically recorded, unless there is a lack of proper equipment or time is of the essence. A custodial interrogation is any interrogation by a police officer in which the individual being interrogated is not free to leave and a question is asked that is designed to elicit an incriminating response. The individual must be advised of specified rights prior to the interrogation, which must also be recorded. For purposes of this bill, it is assumed that a capital offense is one for which the death penalty may be imposed.

**Fiscal Summary**

**State Effect:** General fund expenditures increase by an estimated \$86,900 in FY 2006 for the Department of State Police to purchase videotaping equipment and supplies. Out-years reflect ongoing costs for videotapes and replacement equipment purchases in FY 2009.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	86,900	2,000	2,000	92,300	2,100
Net Effect	(\$86,900)	(\$2,000)	(\$2,000)	(\$92,300)	(\$2,100)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** The bill is consistent with current practices in certain local jurisdictions.  
**The bill may impose a mandate on a unit of local government.**

**Small Business Effect:** None.

## Analysis

**Current Law:** Maryland law does not require or prohibit videotaped interrogations. The practice varies throughout the State.

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court held that a criminal defendant must be advised of the rights specified in the bill before answering any questions designed to elicit an incriminating response, or the answers would be inadmissible in a subsequent court proceeding.

**Background:** Interest in recorded interrogations has increased following the 2002 release of the five teenagers convicted of the 1989 rape and near-murder of the “Central Park Jogger” on the basis of their nonvideotaped interrogations, but videotaped confessions. They were ordered released after another person confessed to having committed the crime, acting alone, and DNA evidence failed to link the teenagers to the attack.

Recording the *Miranda* warnings at the start of an interrogation could reduce subsequent challenges based on a defendant’s allegation that law enforcement failed to properly advise of these rights. The practice could also help resolve questions as to what was said and done over the course of an interrogation.

Six states have mandatory recording of confessions: Alaska, Illinois, Massachusetts, Minnesota, New Jersey, and Texas. The Alaska and Minnesota supreme courts have informed law enforcement officials in those states that they must record interviews of suspects in detention whenever feasible, or risk the statements being ruled inadmissible in court. Some local jurisdictions, including Kansas City, Missouri, and San Diego, California, also require videotaping.

**State Fiscal Effect:** This bill could increase general fund expenditures by \$86,935 in fiscal 2005. This includes the purchase of four VCRs, one monitor and a mounting station, and five video cameras, for each barracks, at a cost of \$65,435, and \$5,000 for videotapes. It also includes the purchase of five high-speed VCR duplicating machines (one per region) at a cost of \$5,000 to facilitate multiple duplications of the interrogations (one copy for the State and one copy for the defense) and two audio tape recorders per facility at a cost of \$11,500, as backup to the video recorders. It is anticipated that the interrogations will be both audio and video recorded to guarantee that there is some record of the interrogation.

The estimate is based on regular tape recordings. While digital recordings have significant advantages – for example, they cannot be subsequently altered – they are also substantially more expensive than tape recordings.

92 VCRs (4 for each facility)	\$13,800
23 Monitors and Mounting Stations	5,750
115 Video Cameras (5 for each facility)	45,885
Cost of Videotapes	5,000
VCR Duplicating Machines (1 per region)	5,000
Tape Recorders (2 for each facility)	<u>11,500</u>
<b>Total</b>	<b>\$86,935</b>

**Local Expenditures:** Based on a sampling of local jurisdictions, the bill may have varying fiscal impacts. The bill will have minimal fiscal impact in Baltimore City and Montgomery County, which already videotape interrogations in homicides and other major crimes; and in Prince George’s County, which videotapes all interrogations. Somerset County anticipates that the State Police will supply the necessary equipment to implement this bill. Frederick County advises that the Sheriff’s Office would need to alter their policies with regard to interrogations, but no additional equipment would be needed. Last year, for an identical bill, Charles County advised that it would cost \$6,275 to purchase the necessary equipment; this year, the county advises that there would be no significant fiscal impact.

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### Additional Information

**Prior Introductions:** HB 118 of 2004 received an unfavorable report from the House Judiciary Committee. HB 387 of 2003, a similar bill, would have required videotaping of all custodial interrogations. That bill received an unfavorable report from the House Judiciary Committee.

**Cross File:** None.

**Information Source(s):** Somerset County, Montgomery County, Prince George’s County, Charles County, Department of State Police, Office of the Public Defender, City of Frederick, City of Glen Arden, Frederick County, Department of Legislative Services

**Fiscal Note History:** First Reader - January 25, 2005  
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