

SENATE BILL 193

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71r1295
CF HB 67

By: **Senators Conway, Britt, Currie, Della, Exum, Gladden, Jones, Kelley,
McFadden, Pugh, and Raskin**

Introduced and read first time: January 26, 2007

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Custodial Interrogation – Electronic Recordation**

3 FOR the purpose of establishing that, in a prosecution for a crime of violence,
4 statements of a defendant made during a certain custodial interrogation are
5 presumed involuntary unless a certain electronic recording is made of the
6 interrogation; establishing that, if a court finds by a preponderance of evidence
7 that a defendant was subjected to a custodial interrogation in violation of this
8 Act, a statement made by the defendant following the custodial interrogation is
9 presumed involuntary in a prosecution for a crime of violence; establishing that
10 a presumption of involuntariness established by this Act may be overcome by
11 certain clear and convincing evidence; providing that this Act does not preclude
12 the admission in a criminal proceeding of certain statements by a defendant;
13 prohibiting the State from destroying or altering certain electronic recordings
14 made of certain custodial interrogations until certain circumstances exist;
15 defining certain terms; providing for the application of this Act; and generally
16 relating to custodial interrogations of certain individuals.

17 BY adding to

18 Article – Criminal Procedure

19 Section 2–401 through 2–403 to be under the new subtitle “Subtitle 4. Custodial
20 Interrogation”

21 Annotated Code of Maryland

22 (2001 Volume and 2006 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Criminal Procedure**

4 **SUBTITLE 4. CUSTODIAL INTERROGATION.**

5 **2-401.**

6 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
7 INDICATED.

8 (B) “CRIME OF VIOLENCE” HAS THE MEANING STATED IN § 14-101 OF
9 THE CRIMINAL LAW ARTICLE.

10 (C) “CUSTODIAL INTERROGATION” MEANS AN INTERROGATION BY A
11 POLICE OFFICER IN WHICH THE INDIVIDUAL BEING INTERROGATED IS NOT
12 FREE TO LEAVE.

13 (D) “ELECTRONIC RECORDING” MEANS A VIDEOTAPE OR DIGITAL
14 RECORDING THAT INCLUDES BOTH AUDIO AND VISUAL REPRESENTATIONS OF
15 ALL PARTICIPANTS IN THE CUSTODIAL INTERROGATION.

16 **2-402.**

17 **THIS SUBTITLE APPLIES TO A PROSECUTION FOR A CRIME OF VIOLENCE.**

18 **2-403.**

19 (A) AN ORAL, WRITTEN, OR SIGN LANGUAGE STATEMENT OF A
20 DEFENDANT MADE DURING A CUSTODIAL INTERROGATION SHALL BE
21 PRESUMED INVOLUNTARY UNLESS AN ELECTRONIC RECORDING IS MADE OF
22 THE ENTIRE CUSTODIAL INTERROGATION THAT:

23 (1) IS SUBSTANTIALLY ACCURATE;

24 (2) IS NOT INTENTIONALLY ALTERED; AND

1 **(3) INCLUDES AN ADVISEMENT OF, AND WAIVER BY, THE**
2 **DEFENDANT OF THE CONSTITUTIONAL RIGHTS OF THE DEFENDANT REGARDING**
3 **SELF-INCRIMINATION AND THE RIGHT TO COUNSEL.**

4 **(B) IF THE COURT FINDS, BY A PREPONDERANCE OF EVIDENCE, THAT A**
5 **DEFENDANT WAS SUBJECTED TO A CUSTODIAL INTERROGATION IN VIOLATION**
6 **OF SUBSECTION (A) OF THIS SECTION, A STATEMENT MADE BY THE DEFENDANT**
7 **FOLLOWING THE CUSTODIAL INTERROGATION, EVEN IF OTHERWISE IN**
8 **COMPLIANCE WITH THIS SECTION, IS PRESUMED INVOLUNTARY.**

9 **(C) A PRESUMPTION OF INVOLUNTARINESS UNDER THIS SECTION MAY**
10 **BE OVERCOME BY CLEAR AND CONVINCING EVIDENCE THAT:**

11 **(1) A STATEMENT WAS VOLUNTARY AND RELIABLE; AND**

12 **(2) LAW ENFORCEMENT OFFICERS HAD GOOD CAUSE FOR**
13 **FAILURE TO RECORD THE ENTIRE INTERROGATION, INCLUDING EVIDENCE**
14 **THAT THE FAILURE TO ELECTRONICALLY RECORD THE ENTIRE INTERROGATION**
15 **WAS THE RESULT OF EQUIPMENT FAILURE AND OBTAINING REPLACEMENT**
16 **EQUIPMENT WAS NOT FEASIBLE.**

17 **(D) THIS SECTION DOES NOT PRECLUDE THE ADMISSION OF A**
18 **STATEMENT BY A DEFENDANT THAT IS:**

19 **(1) MADE IN OPEN COURT AT TRIAL, BEFORE A GRAND JURY, OR**
20 **AT A PRELIMINARY HEARING;**

21 **(2) MADE SPONTANEOUSLY AND NOT IN RESPONSE TO A**
22 **QUESTION;**

23 **(3) MADE AFTER QUESTIONING THAT IS ROUTINELY ASKED**
24 **DURING THE PROCESSING OF AN ARREST;**

25 **(4) MADE DURING A CUSTODIAL INTERROGATION CONDUCTED**
26 **OUT-OF-STATE IN COMPLIANCE WITH THE LAW OF THAT JURISDICTION AND**
27 **NOT CONDUCTED IN CONJUNCTION WITH STATE LAW ENFORCEMENT AGENTS;**

28 **(5) OBTAINED BY A FEDERAL LAW ENFORCEMENT OFFICER IN A**
29 **FEDERAL PLACE OF DETENTION ACTING IN COMPLIANCE WITH FEDERAL LAW**

1 AND NOT CONDUCTED IN CONJUNCTION WITH STATE LAW ENFORCEMENT
2 AGENTS; OR

3 (6) GIVEN AT A TIME WHEN THE INTERROGATORS ARE UNAWARE
4 THAT THE DEFENDANT IS SUSPECTED OF A CRIME OF VIOLENCE.

5 (E) THE STATE MAY NOT DESTROY OR ALTER AN ELECTRONIC
6 RECORDING MADE OF A CUSTODIAL INTERROGATION UNDER THIS SECTION
7 UNTIL:

8 (1) THE CONVICTION OF THE DEFENDANT FOR AN OFFENSE
9 RELATING TO THE INTERROGATION IS FINAL AND ALL DIRECT AND HABEAS
10 CORPUS APPEALS ARE EXHAUSTED; OR

11 (2) PROSECUTION FOR AN OFFENSE RELATING TO THE
12 INTERROGATION IS BARRED BY LAW.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
14 construed to apply only prospectively and may not be applied or interpreted to have
15 any effect on or application to any statement obtained from a defendant before the
16 effective date of this Act.

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2007.