

Department of Legislative Services
 Maryland General Assembly
 2007 Session

FISCAL AND POLICY NOTE

Senate Bill 193 (Senator Conway, *et al.*)
 Judicial Proceedings

Criminal Procedure - Custodial Interrogation - Electronic Recordation

This bill establishes that a criminal defendant’s statement during custodial interrogation for a crime of violence is presumed involuntary unless an electronic recording is made of the interrogation. The bill contains provisions outlining the requirements for this recording, and the circumstances under which the presumption may be overcome.

The bill applies prospectively to statements made on or after the bill’s October 1, 2007 effective date.

Fiscal Summary

State Effect: General fund expenditures increase by an estimated \$251,200 in FY 2008 to purchase digital videotaping equipment and supplies. Transportation Trust Fund expenditures could increase by \$21,700 for the Maryland Transit Authority to rent additional office space and pay some additional hours of overtime pay. Out-years also reflect ongoing costs for recordable DVDs and replacement equipment purchases in FY 2011.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	251,200	24,700	24,700	225,600	24,700
SF Expenditure	21,700	22,300	23,200	24,000	24,900
NonBud Exp.	-	-	-	-	-
Net Effect	(\$272,900)	(\$47,000)	(\$47,900)	(\$249,600)	(\$49,600)

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

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

Small Business Effect: None.

Analysis

Bill Summary: The bill creates a presumption that a criminal defendant's statement during custodial interrogation for a crime of violence is involuntary unless an electronic recording is made of the interrogation. A "custodial interrogation" is an interrogation by a police officer in which the individual being interrogated is not free to leave. An "electronic recording" means a video tape or digital recording that includes both audio and visual representation of all participants in the interrogation.

The required electronic recording must: (1) be substantially accurate; (2) not be intentionally altered; and (3) include an advisement of the defendant's constitutional rights against self-incrimination and right to counsel.

This presumption may be overcome by clear and convincing evidence that the statement was voluntary and reliable, and that law enforcement officers had good cause for the failure to record.

The provisions of this bill do not apply to a statement made by a defendant that is:

- made in open court at trial, before a grand jury, or at a preliminary hearing;
- made spontaneously and not in response to a question;
- made after questioning that is routinely asked during the processing of an arrest;
- made during an out-of-state custodial interrogation in compliance with the law of that jurisdiction;
- obtained by a federal law enforcement officer in a federal place of detention in compliance with federal law; or
- given at a time when the interrogators are unaware that the defendant is suspected of a crime of violence.

The State is prohibited from destroying or altering electronic recordings until the State is barred from prosecution of an offense relating to the interrogation or the defendant's conviction is final and all of the defendant's direct and *habeas corpus* appeals have been exhausted.

Current Law: Maryland law does not require or prohibit recorded 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 specific rights before answering any questions designed to elicit an incriminating response, or the answers would be inadmissible in a subsequent court proceeding. These rights are: (1) the right to remain silent; (2) the right to an attorney and the right to have the attorney present during interrogation; and (3) the right to have an attorney appointed for the individual if the individual is unable to afford one. The individual must also be informed that anything the individual says may be used against him or her in a court of law.

Section 14-101 of the Criminal Law Article defines a “crime of violence” to include 21 specific crimes, including abduction, arson, kidnapping, manslaughter, murder, rape, carjacking, first or second degree sexual offense, various types of assault, and attempts to commit the above crimes.

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.

Alaska, Illinois, Maine, Minnesota, New Jersey, New Mexico, and Wisconsin have mandatory recording of confessions. 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 Broward County, Florida; Denver, Colorado; San Diego, California; and Houston, Austin, and Dallas, Texas also require electronic recording. Legislation concerning the mandatory electronic recording of interrogations was introduced in 20 states and the District of Columbia in 2005 or 2006, and 10 states to date in 2007.

State Expenditures: This bill could increase general fund expenditures by \$251,200 and Transportation Trust Fund expenditures by \$21,686 in fiscal 2008 to allow various State agencies to comply with the recording requirements of this bill.

Maryland State Police

The Department of State Police advises that it would be required to purchase a digital recorder (capable of recoding onto DVD media), monitor, video camera, mounting station, and voice activated audio recorders (as backup in case the video camera fails) for each police facility or barrack (23). A back up camera, audio recorder, and digital recorder would be stored centrally to deploy to any of the 23 installations should a failure occur.

The estimated costs are as follows:

25 Digital-recorders w/DVD-RW	\$87,500
25 LCD Monitors	\$8,750
25 Audio Monitors	\$6,250
25 Video Cameras	\$50,000
Wires and Connectors	\$7,200
24 Mounting Stations	\$1,200
Installation / Labor	\$36,000
48 DVD-R recording media (100 pack)	<u>\$2,400</u>
Total	\$199,300

Maryland Transit Administration and Maryland Transportation Authority Police

The Maryland Transit Administration (MTA) reports that it processed 211 crimes of violence in 2006. MTA advises that their police officers do not have a secure facility or office space in which to record interrogations, and would need to rent and equip two rooms for interrogation and record keeping to meet the requirements of this bill. Additionally, approximately 400 hours of overtime pay for officers would be needed to compensate for additional time spent in transit to this facility. MTA estimates that this will result in an increased expenditure of \$21,886 in fiscal 2008.

The Maryland Transportation Authority advises that it may need to equip additional police vehicles with in-car video equipment, but the total cost of this equipment cannot be determined at this time. This expenditure would come out of nonbudgeted funds.

Department of Public Safety and Correctional Services (DPSCS)

The Department of Public Safety and Correctional Services advises that its expenditures will increase by an estimated \$4,900 in fiscal 2008 to pay for video equipment and supplies. DPSCS would also bear duplication costs, resulting in increased out-year expenditures estimated at \$2,300 annually.

Department of Natural Resources

The Department of Natural Resources police advises that it does not have equipment to conduct videotaped interrogations, nor does it have dedicated interview rooms. It would require a camera-equipped room at each of their nine locations. The Department of Legislative Services estimates that this would increase expenditures by \$47,000 for equipment and office space rental in fiscal 2008, and \$20,000 per year for office space rental and supplies in subsequent years.

Local Expenditures: Based on a sampling of local jurisdictions, the bill could have varying fiscal impacts. The bill will have minimal fiscal impact in Montgomery County, which already videotapes interrogations in homicides and other major crimes, and in Prince George's County, which videotapes all interrogations. Jurisdictions that do not record interrogations now could incur significant costs.

Additional Information

Prior Introductions: HB 414 of 2006, a similar bill, received a hearing in the House Judiciary Committee, but was withdrawn.

Cross File: HB 67 (Delegate Anderson, *et al.*) – Judiciary.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of State Police, Maryland Department of Transportation, Department of Public Safety and Correctional Services, Center for Policy Alternatives, National Association of Criminal Defense Lawyers, Department of Legislative Services

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