
By: **Delegate Dembrow**

Introduced and read first time: January 28, 2002

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Videotape of Questioning and Statements - Arrested**
3 **Individuals and Child Abuse Victims**

4 FOR the purpose of requiring that certain questioning of and statements by certain
5 individuals arrested for or questioned concerning crimes of violence and child
6 abuse victims to be videotaped under certain circumstances; prohibiting the
7 questioning of or statements by certain individuals under certain circumstances;
8 prohibiting certain individuals from waiving certain rights; providing certain
9 remedies for certain violations; providing for evidentiary rules concerning
10 certain statements and evidence; establishing certain procedures concerning
11 videotapes; allowing certain grants and funds to be used to obtain videotape
12 equipment and training; establishing that the interception of certain oral
13 communications in accordance with this Act is lawful; defining a certain term;
14 and generally relating to videotaping of questioning of and statements by
15 arrested individuals and child abuse victims.

16 BY adding to
17 Article - Criminal Procedure
18 Section 2-401 through 2-404 to be under the new subtitle "Subtitle 4. Videotape
19 of Questioning and Statements"
20 Annotated Code of Maryland
21 (2001 Volume)

22 BY repealing and reenacting, with amendments,
23 Article - Criminal Procedure
24 Section 11-304(b)
25 Annotated Code of Maryland
26 (2001 Volume)

27 BY adding to
28 Article - Courts and Judicial Proceedings
29 Section 10-402(c)(10)
30 Annotated Code of Maryland

1 (1998 Replacement Volume and 2001 Supplement)

2 BY repealing and reenacting, with amendments,
3 Article 41 - Governor - Executive and Administrative Departments
4 Section 4-101
5 Annotated Code of Maryland
6 (1997 Replacement Volume and 2001 Supplement)

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

9 **Article - Criminal Procedure**

10 **SUBTITLE 4. VIDEOTAPE OF QUESTIONING AND STATEMENTS.**

11 2-401.

12 IN THIS SUBTITLE, "VIDEOTAPE" MEANS A RECORDING OF SOUNDS AND IMAGES
13 BY ELECTRONIC MEANS.

14 2-402.

15 (A) THIS SECTION APPLIES ONLY TO CRIMES OF VIOLENCE AS DEFINED
16 UNDER § 14-101 OF THE CRIMINAL LAW ARTICLE.

17 (B) THIS SECTION APPLIES TO AN INDIVIDUAL WHO:

18 (1) IS ARRESTED FOR A CRIME OF VIOLENCE; OR

19 (2) IS REQUESTED BY A POLICE OFFICER, STATE'S ATTORNEY, OR OTHER
20 AGENT OF THE STATE TO COME TO OR REMAIN AT ONE OF THE FOLLOWING
21 LOCATIONS FOR QUESTIONING CONCERNING A CRIME OF VIOLENCE:

22 (I) A POLICE STATION;

23 (II) A STATE'S ATTORNEY'S OFFICE; OR

24 (III) ANOTHER GOVERNMENTAL LOCATION SIMILAR TO ITEMS (I)
25 AND (II) OF THIS PARAGRAPH.

26 (C) THIS SECTION DOES NOT APPLY TO AN INDIVIDUAL WHO MAKES A
27 STATEMENT CONCERNING A CRIME OF VIOLENCE OTHER THAN AS PROVIDED IN
28 SUBSECTION (B) OF THIS SECTION.

29 (D) A POLICE OFFICER, STATE'S ATTORNEY, OR OTHER AGENT OF THE STATE
30 MAY NOT QUESTION AN INDIVIDUAL CONCERNING A CRIME OF VIOLENCE OR
31 OBTAIN A STATEMENT CONCERNING A CRIME OF VIOLENCE UNLESS:

32 (1) AN ATTORNEY REPRESENTING THE INDIVIDUAL IS PRESENT AT THE
33 QUESTIONING; OR

1 (2) (I) THE INDIVIDUAL WAIVES THE RIGHT TO HAVE AN ATTORNEY
2 PRESENT; AND

3 (II) A VIDEOTAPE IS MADE OF THE QUESTIONING.

4 (E) IF AN INDIVIDUAL'S QUESTIONING OR STATEMENT IS MADE ON
5 VIDEOTAPE UNDER SUBSECTION (D)(2) OF THIS SECTION, THE VIDEOTAPE SHALL
6 INCLUDE THE INDIVIDUAL'S STATEMENT WAIVING THE RIGHT TO HAVE AN
7 ATTORNEY PRESENT.

8 (F) AN INDIVIDUAL MAY NOT WAIVE THE RIGHT TO HAVE THE QUESTIONING
9 OR STATEMENT MADE ON VIDEOTAPE UNDER SUBSECTION (D)(2) OF THIS SECTION.

10 (G) IF A CRIMINAL CHARGE OR A JUVENILE PETITION IS BROUGHT
11 FOLLOWING THE QUESTIONING OR STATEMENT, THE STATE SHALL GIVE THE
12 DEFENDANT OR CHILD A COPY OF THE VIDEOTAPE REQUIRED UNDER THIS SECTION
13 AT THE EARLIER OF THE DATE ORDERED BY THE COURT OR 60 DAYS BEFORE TRIAL.

14 (H) (1) (I) A CONFESSION OR OTHER STATEMENT OBTAINED IN A
15 WILLFUL VIOLATION OF SUBSECTION (C) OF THIS SECTION IS INADMISSIBLE IN A
16 PROCEEDING AGAINST THE DEFENDANT OR CHILD.

17 (II) IF THE VIOLATION OF SUBSECTION (D) OF THIS SECTION WAS
18 NOT WILLFUL OR FOR ANY OTHER VIOLATION OF THIS SECTION:

19 1. THE COURT SHALL ADMIT THE CONFESSION OR
20 STATEMENT INTO EVIDENCE PROVIDED THE CONFESSION OR STATEMENT IS
21 OTHERWISE ADMISSIBLE;

22 2. THE COURT MAY ORDER ANY OTHER RELIEF IT
23 CONSIDERS APPROPRIATE IN THE INTERESTS OF JUSTICE; AND

24 3. THE DEFENDANT MAY INTRODUCE INTO EVIDENCE THE
25 FACT OF THE VIOLATION OF SUBSECTION (D) OF THIS SECTION.

26 (2) UNLESS EXCLUDED UNDER ANOTHER LAW, ANY EVIDENCE
27 OBTAINED AS A RESULT OF THE DEFENDANT'S OR CHILD'S STATEMENTS OBTAINED
28 IN VIOLATION OF THIS SECTION IS ADMISSIBLE IN ANY PROCEEDING.

29 2-403.

30 (A) IF PRACTICAL, A POLICE OFFICER, STATE'S ATTORNEY, OR OTHER AGENT
31 OF THE STATE CONDUCTING OR PARTICIPATING IN A CHILD ABUSE INVESTIGATION
32 SHALL MAKE A VIDEOTAPE OF ANY QUESTIONING OF OR STATEMENT BY THE
33 ALLEGED VICTIM.

34 (B) IF A CRIMINAL CHARGE OR A JUVENILE PETITION IS BROUGHT IN A CHILD
35 ABUSE CASE, THE STATE SHALL GIVE THE DEFENDANT OR CHILD A COPY OF A
36 VIDEOTAPE REQUIRED UNDER THIS SECTION AT THE EARLIER OF THE DATE
37 ORDERED BY THE COURT OR 60 DAYS BEFORE TRIAL.

1 (C) (1) (I) UNLESS MAKING A VIDEOTAPE WAS NOT PRACTICAL, A
2 STATEMENT MADE BY A CHILD VICTIM IN A WILLFUL VIOLATION OF THIS SECTION IS
3 INADMISSIBLE UNDER § 11-304 OF THIS ARTICLE.

4 (II) THE BURDEN OF PROOF IS ON THE STATE TO SHOW BY A
5 PREPONDERANCE OF THE EVIDENCE THAT COMPLIANCE WITH SUBSECTION (A) OF
6 THIS SECTION WAS NOT PRACTICAL.

7 (2) IF A VIOLATION OF THIS SECTION WAS NOT WILLFUL, A COURT MAY
8 AWARD ATTORNEY'S FEES AND ORDER ANY RELIEF IT CONSIDERS APPROPRIATE IN
9 THE INTERESTS OF JUSTICE.

10 2-404.

11 THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION MAY MAKE
12 GRANTS TO STATE AND LOCAL LAW ENFORCEMENT UNITS TO OBTAIN EQUIPMENT
13 AND TRAINING FOR VIDEOTAPING TO CARRY OUT THIS SUBTITLE.

14 11-304.

15 (b) Subject to § 2-403 OF THIS ARTICLE AND subsections (c), (d), and (e) of this
16 section, the court may admit into evidence in a juvenile court proceeding or in a
17 criminal proceeding an out of court statement to prove the truth of the matter
18 asserted in the statement made by a child victim who:

19 (1) is under the age of 12 years; and

20 (2) is the alleged victim or the child alleged to need assistance in the case
21 before the court concerning:

22 (i) child abuse under Article 27, § 35C of the Code;

23 (ii) rape or sexual offense under Article 27, §§ 462 through 464B of
24 the Code;

25 (iii) attempted rape or attempted sexual offense in the first degree
26 or in the second degree under Article 27, § 464F of the Code; or

27 (iv) in a juvenile court proceeding, abuse or neglect as defined in §
28 5-701 of the Family Law Article.

29 **Article - Courts and Judicial Proceedings**

30 10-402.

31 (c) (10) IT IS LAWFUL UNDER THIS SUBTITLE FOR AN INVESTIGATIVE OR
32 LAW ENFORCEMENT OFFICER, A STATE'S ATTORNEY, OR OTHER AGENT OF THE
33 STATE TO INTERCEPT AN ORAL COMMUNICATION MADE AS PART OF A VIDEOTAPE
34 UNDER TITLE 2, SUBTITLE 4 OF THE CRIMINAL PROCEDURE ARTICLE.

Article 41 - Governor - Executive and Administrative Departments

1 4-101.

2 (a) (1) In this section the following words have the meanings indicated.

3 (2) "Executive Director" means the Executive Director of the Governor's
4 Office of Crime Control and Prevention.

5 (3) "Fund" means the Law Enforcement Equipment Fund established
6 under this section.

7 (4) "Local law enforcement agency" means the agency of any county or
8 municipal corporation, including Baltimore City, within this State that performs
9 police protection functions.

10 (5) "Law enforcement equipment" means any equipment used for law
11 enforcement purposes including body armor, crime tracking technology, photo
12 imaging equipment, surveillance devices, weapons, ammunition, [and]
13 communication devices, AND VIDEOTAPE EQUIPMENT.

14 (b) A Law Enforcement Equipment Fund is established to assist local law
15 enforcement agencies in acquiring law enforcement equipment needed to:

16 (1) [address] ADDRESS violent crime; AND

17 (2) OBTAIN VIDEOTAPE EQUIPMENT TO VIDEOTAPE QUESTIONING AND
18 STATEMENTS AS REQUIRED UNDER TITLE 2, SUBTITLE 4 OF THE CRIMINAL
19 PROCEDURE ARTICLE AND FOR OTHER LAW ENFORCEMENT PURPOSES.

20 (c) (1) The Executive Director shall administer the Fund in accordance with
21 this section and other applicable law.

22 (2) The Fund shall consist of money appropriated in the State budget.

23 (3) Payments out of the Fund shall be made to a local law enforcement
24 agency by the State Treasurer as authorized by the Executive Director.

25 (4) (i) The fund is a continuing, nonlapsing fund which is not subject
26 to § 7-302 of the State Finance and Procurement Article.

27 (ii) The Treasurer shall separately hold and the Comptroller shall
28 account for the fund in conjunction with the Executive Director.

29 (iii) The Treasurer may invest moneys in the fund in the same
30 manner as other State money may be invested.

31 (d) (1) The Executive Director shall establish application procedures for
32 local law enforcement agencies to apply for aid from the Fund, with funding priority
33 given to those jurisdictions with the highest incidence of violent crime AND THOSE IN
34 NEED OF VIDEOTAPE EQUIPMENT.
35

1 (2) A local law enforcement agency applying for aid from the Fund shall
2 provide the following information to the Executive Director:

3 (i) The number of violent crime incidents committed within the
4 jurisdiction of the local law enforcement agency for the last 2 years;

5 (II) THE NUMBER AND TYPE OF VIDEOTAPE EQUIPMENT
6 AVAILABLE TO THE AGENCY; and

7 [(ii)] (III) Any other information that the Executive Director
8 deems necessary in making awards for law enforcement equipment.

9 (e) The Executive Director, to the extent provided in the State budget, shall
10 provide grants for the purchase or replacement of law enforcement equipment to local
11 law enforcement agencies based upon the comparative needs of each local law
12 enforcement agency as determined from the information provided under subsection
13 (d)(2) of this section.

14 (f) The aid distributed under this section shall be used to supplement, not
15 supplant, other local law enforcement funding.

16 (g) After a local law enforcement agency receives notice of a grant award from
17 the Executive Director, the local law enforcement agency must submit proof of
18 expenditures on law enforcement equipment to the Executive Director.

19 (h) The Executive Director shall report annually by September 1 to the
20 Governor and, in accordance with § 2-1246 of the State Government Article, to the
21 General Assembly, as to the distribution of aid provided under this section.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2002.