

Department of Legislative Services
 Maryland General Assembly
 2002 Session

FISCAL NOTE

House Bill 407 (Delegate Dembrow)
 Judiciary

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

This bill provides that an individual may not be questioned by a police officer, State’s Attorney, or other State agent concerning a crime of violence unless the individual either: (1) has an attorney present; or (2) has waived the right to have an attorney present and a videotape is made of the questioning. The bill requires that a defendant or juvenile charged with a crime following videotaped questioning receive a copy of the videotape within a specified time. The bill provides for when a confession or statement obtained in violation of the bill’s provisions may be used against the individual.

This bill also requires that, if practical, a police officer, State’s Attorney, or other State agent participating in a child abuse investigation must make a videotape of any questioning of or statement by the alleged victim and provide a copy of that videotape within a specified time to a defendant or juvenile subsequently charged.

Fiscal Summary

State Effect: General fund expenditures increase by an estimated \$194,700 in FY 2003 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 2006.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	194,700	15,800	16,000	204,600	16,300
Net Effect	(\$194,700)	(\$15,800)	(\$16,000)	(\$204,600)	(\$16,300)

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

Local Effect: Minimal, assuming that local police departments seek grants from the Law Enforcement Equipment Fund for videotaping equipment.

Small Business Effect: Potential meaningful revenue increases to the extent that any videotaping equipment is purchased from small businesses. According to the 1998 survey of the U.S. Census Department, 92.9% of the firms in Maryland have less than 50 employees.

Analysis

Bill Summary: This bill provides that, for any individual arrested for a crime of violence or requested by a police officer, State's Attorney, or other State agent to come to a governmental location for questioning regarding a crime of violence, an individual may not be questioned by the State actor concerning a crime of violence unless either: (1) the individual's attorney is present; or (2) the individual has waived the right to have an attorney present and a videotape is made of the questioning. The individual may not waive the right to the videotape procedure.

If the State files criminal charges or a juvenile petition following videotaped questioning, the State must give the defendant or child (respondent in a juvenile proceeding) a copy of the videotape at the earlier of a date ordered by the court or 60 days before trial.

If a confession or other statement is obtained in willful violation of these procedures, it is inadmissible against the defendant or child respondent. If a confession or other statement is obtained in a non-willful violation of these procedures and it is otherwise admissible as evidence, the court must admit the confession or statement into evidence. However, the court may order any other relief it considers appropriate and the defendant may introduce evidence of the violation. Any further evidence obtained as a result of a confession or statement that was obtained in violation of these procedures is admissible, unless excludable under another law.

This bill also requires that, if practical, a police officer, State's Attorney, or other State agent participating in a child abuse investigation must make a videotape of any questioning or statement by the alleged victim. The State bears the burden of proving by a preponderance of the evidence that videotaping was not practical. If the State files criminal charges or a juvenile petition in a child abuse case, the State must give the defendant or child (presumably the respondent in a juvenile proceeding) a copy of the videotape at the earlier of a date ordered by the court or 60 days before trial. A statement made by a child victim in a willful violation of this procedure is inadmissible. A statement made in non-willful violation of the procedure is admissible subject to existing

laws regarding admitting a child victim's statements. However, the court may award attorney's fees and any other relief it considers appropriate.

The bill provides that the Governor's Office of Crime Control and Prevention may make grants to the State and local law enforcement units to obtain equipment and training for videotaping to carry out these provisions. The bill specifically adds videotape equipment to the type of equipment for which the Law Enforcement Equipment Fund is established. The bill mandates that a local law enforcement agency applying for aid from the fund must provide, among other information, the number and type of videotape equipment available to the agency. The bill also makes it lawful for a law enforcement officer, State's Attorney, or other State agent to intercept an oral communication made as part of these videotape procedures.

Current Law: State law defines a crime of violence as:

- abduction;
- first degree arson;
- kidnapping;
- manslaughter (except involuntary manslaughter);
- mayhem;
- maiming;
- murder;
- rape;
- robbery or robbery with a dangerous weapon;
- carjacking or armed carjacking;
- first or second degree sexual offense;
- use of a handgun in the commission of a felony or crime of violence;
- an attempt to commit any of the above crimes; and
- first degree assault or assault with intent to murder, rape, rob, or commit a first or second degree sexual offense.

Every individual in the United States has a constitutional right against self-incrimination. However, when a person makes a statement voluntarily, that statement does not fall within the purview of the right against self-incrimination. A statement must be looked at in terms of the totality of the circumstances under which it was made to determine whether the statement was the result of interrogation or made voluntarily. Interrogation "refers not only to express questioning, but also to any words or actions on the part of the

police...that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980).

Pursuant to the landmark case of *Miranda v. Arizona* (384 U.S. 436 (1966)), before an individual may be subjected to an interrogation by police, that individual must be informed of the right: (1) to remain silent (*i.e.*, to refuse to answer questions); (2) to have an attorney present during questioning; and (3) to have an attorney appointed if the individual cannot afford one. The individual must agree to answer questions despite these rights before questioning or interrogation may begin. If an individual requests an attorney at any time during questioning, all questioning must cease. Under current law, however, there is no right to have the questioning videotaped when the individual waives the right to have counsel present.

The U.S. Supreme Court specifically held that juveniles are entitled to the right against self-incrimination one year after the *Miranda* decision in *In re Gault*, 387 U.S. 1 (1967). The court found that “admissions and confessions of juveniles require special caution” to assure that statement by juveniles are not “coerced or suggested . . . [or] the product of ignorance of rights or of adolescent fantasy, fright, or despair.” *Id.*

Rules of discovery require that the State furnish the defendant with any material or information in its possession that could be considered exculpatory. The rules also require that, upon the defendant’s request, the State provide the defendant with a copy of any statement or part of a statement made by the defendant to a State agent that the State intends to use at trial. The rules applying to circuit court proceedings specifically require the State to provide the defendant, upon request, with a copy of any recorded statement whenever the State intends to use the statement (or part of it) at trial.

Generally, any statement made in violation of an individual’s *Miranda* rights may not be used against the individual at trial. Further, any subsequent evidence obtained as a direct result of unlawful questioning may not be used against the individual at trial.

Background: Although there is no law that currently requires statements by or questioning of child abuse victims to be videotaped, many jurisdictions across the country have established multidisciplinary child advocacy centers where child victims may be questioned once by a trained forensic interviewer in a “child-friendly” atmosphere. The interview is videotaped (usually at the request of a state agent who maintains control over the videotape) to alleviate the need for multiple interviews by different agencies (law enforcement, social services, etc.). Maryland affiliates of the National Child Advocacy Center, using this multidisciplinary approach, exist in Ellicott City, Baltimore City, Harford County, Carroll County, Prince George’s County, and Waldorf.

The Law Enforcement Equipment Fund was established in 2001 upon enactment of Chapter 603 (Senate Bill 453) to assist local law enforcement agencies in acquiring law enforcement equipment needed to address violent crime. The Governor's Office of Crime Control and Prevention is responsible for administration of grants from this fund.

State Fiscal Effect: The Department of State Police estimates that this bill could increase general fund expenditures by \$547,677 in fiscal 2003, which includes \$194,304 for "professional" training on the use of the videotaping equipment for 366 individuals (30 field installations with 4 individuals trained per field installation). According to the department, such training is necessary to operate the equipment and to testify in court on the training. This estimate includes set-up of eyewitness videotaping systems at \$4,279 per system at the department's 30 field installations (23 for Maryland State Police and 7 for Field Marshals' Offices), totaling \$128,370. According to the department, these videotaping systems are the same ones currently used in State police vehicles; for chain of custody purposes, they can only be opened (then coded and marked) at the barracks by the duty officer. It includes two backup cameras for each region within the Maryland State Police and Field Marshals' Offices at \$848 each, for 16 total backup cameras totaling \$13,568. It also includes 800 TV-VCR combinations for playback and review of videotapes at \$200 each, totaling \$160,000. It further includes 7,500 VHS tapes at an estimated \$15,675 and miscellaneous accessories for the equipment totaling \$35,760. The department advises that equipment and accessories have a three-year life, necessitating equipment replacement in fiscal 2006.

Although Legislative Services concurs with most of the department's estimates, it disagrees with two of the assumptions made by the department. First, Legislative Services believes that professional training for 366 individuals is unnecessary, since: (1) by the bill's provisions, videotapes may be introduced into evidence at a trial under specified circumstances without the need to have expert testimony regarding the operation of the videotape equipment; and (2) the department already has individuals trained to use the video systems and chain of custody procedures in place. Second, Legislative Services believes that two TV-VCR combinations at each field installation for a total of 60, rather than 800, would be sufficient for playback of videotapes. Thus, Legislative Services estimates that total fiscal 2003 expenditures would be \$194,670. The information and assumptions used in calculating the estimate are stated below:

- 30 videotaping systems at \$4,279 each and 8 backup cameras at \$848 each;
- 60 TV-VCR combinations at \$200 each;

- 7,500 VHS tapes at \$2.09 each, accounting for bill's October 1, 2002 effective date;
- miscellaneous accessories for the 30 videotaping systems.

Eyewitness Videotaping Systems and Backup Cameras	\$135,154
TV-VCR Combinations	12,000
VHS Tapes	11,756
Miscellaneous Equipment	<u>35,760</u>
Total FY 2003 State Expenditures	\$194,670

Future year expenditures reflect: (1) ongoing videotape costs; and (2) replacement equipment purchases in fiscal 2006, assuming a 1% annual increase in the cost of such purchases.

These expenditures may be offset to the extent that videotaping of interrogations by police reduces the number of complaints filed against police claiming unlawful use of force or coercive measures in obtaining statements.

Local Fiscal Effect: The impact to local law enforcement units is expected to be minimal, assuming that these units seek grants from the Governor's Office of Crime Control and Prevention's Law Enforcement Equipment Fund to purchase videotaping equipment. However, the Governor's Office of Crime Control and Prevention advises that currently there are no funds budgeted for the Law Enforcement Equipment Fund.

State's Attorneys normally defer to law enforcement for questioning of suspects and victims; thus, this bill is not expected to have a direct fiscal impact on State's Attorneys' offices.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State's Attorneys' Association, Prince George's County, Garrett County, Judiciary (Administrative Office of the Courts), Department of State Police, Governor's Office (Commission on Crime Control and Prevention), Department of Legislative Services

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