

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE

House Bill 118 (Delegate Arnick)
 Judiciary

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

This bill requires a custodial interrogation in cases involving a capital offense that occur 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.

The bill will take effect on October 1, 2005.

Fiscal Summary

State Effect: General fund expenditures increase by an estimated \$57,900 in FY 2005 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 2008.

| (in dollars) | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 |
|----------------|------------|-----------|-----------|------------|-----------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 57,900 | 2,000 | 2,000 | 59,600 | 2,100 |
| Net Effect | (\$57,900) | (\$2,000) | (\$2,000) | (\$59,600) | (\$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

Bill Summary: Before a custodial interrogation begins in a capital case, a police officer must advise the individual being questioned that:

- the individual has the right to remain silent;
- anything the individual says will be used against the individual in a court of law;
- the individual has the right to have an attorney and to have the attorney present during the interrogation; and
- if the individual is unable to afford an attorney, the individual has the right to have an attorney appointed to represent the individual.

“Place of detention” means a facility under the control of a law enforcement unit.

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 above-listed rights before answering any questions designed to elicit an incriminating response, or the answers would be inadmissible in a subsequent court proceeding.

Background: Interest in videotaped 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) 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 scene.

Videotaping the *Miranda* warnings at the start of an interrogation could reduce subsequent challenges based on a defendant’s not having been properly apprised of these rights. The practice could also help resolve questions as to what was said and done over the course of an interrogation.

Texas currently requires this by statute. 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 \$57,900 in fiscal 2005. This includes the purchase of a VCR, monitor, four video cameras, and a mounting station for each barracks, at a cost of \$52,900, and \$5,000 for videotapes.

The Department of Legislative Services' (DLS) estimate of a \$57,900 cost in fiscal 2005 is based on the following:

| | |
|---|-----------------|
| 92 VCRs (4 for each facility) | \$13,800 |
| 23 monitors and mounting stations | 4,600 |
| 115 video cameras (5 for each facility) | 34,500 |
| Cost of videotapes | <u>5,000</u> |
| Total | \$57,900 |

The State Police and DLS estimates are 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.

Local Expenditures: 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. Charles County advises that it would cost \$6,275 to purchase the necessary equipment to implement this bill.

Additional Comments: The State Police estimates the cost of videotapes at \$15,000. Because the number of custodial interrogations of capital defendants is expected to be relatively small, DLS believes \$5,000 should be sufficient.

Additional Information

Prior Introductions: HB 387 of 2005 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): State's Attorneys' Association, Montgomery County, Prince George's County, Charles County, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of State Police, Baltimore City, Department of Legislative Services

Fiscal Note History: First Reader - February 2, 2004
ncs/jr

Analysis by: Rita A. Reimer

Direct Inquiries to:
(410) 946-5510
(301) 970-5510