
By: **Delegates Vallario, Anderson, Dumais, Gutierrez, Kelley, Lee, Petzold,
and Rosenberg**

Introduced and read first time: January 27, 2006

Assigned to: Judiciary

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

18 BY adding to

19 Article - Criminal Procedure

20 Section 2-401 through 2-403, inclusive, to be under the new subtitle "Subtitle 4.

21 Custodial Interrogation"

22 Annotated Code of Maryland

23 (2001 Volume and 2005 Supplement)

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

1 **Article - Criminal Procedure**2 **SUBTITLE 4. CUSTODIAL INTERROGATION.**

3 2-401.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.6 (B) "CUSTODIAL INTERROGATION" MEANS AN INTERROGATION BY A POLICE
7 OFFICER IN A PLACE OF DETENTION IN WHICH THE INDIVIDUAL BEING
8 INTERROGATED IS NOT FREE TO LEAVE.9 (C) "ELECTRONIC RECORDING" MEANS A MOTION PICTURE, AUDIOTAPE,
10 VIDEOTAPE, OR DIGITAL RECORDING.11 (D) "PLACE OF DETENTION" MEANS A GOVERNMENTAL FACILITY UNDER THE
12 CONTROL OF A LAW ENFORCEMENT UNIT.

13 2-402.

14 THIS SUBTITLE APPLIES TO A PROSECUTION FOR A CRIME OF VIOLENCE.

15 2-403.

16 (A) AN ORAL, WRITTEN, OR SIGN LANGUAGE STATEMENT OF A DEFENDANT
17 MADE DURING A CUSTODIAL INTERROGATION SHALL BE PRESUMED INADMISSIBLE
18 AS EVIDENCE AGAINST THE DEFENDANT UNLESS AN ELECTRONIC RECORDING IS
19 MADE OF THE ENTIRE CUSTODIAL INTERROGATION THAT:

20 (1) IS SUBSTANTIALLY ACCURATE;

21 (2) IS NOT INTENTIONALLY ALTERED; AND

22 (3) INCLUDES AN ADVISEMENT OF, AND WAIVER BY, THE DEFENDANT
23 OF THE CONSTITUTIONAL RIGHTS OF THE DEFENDANT REGARDING
24 SELF-INCRIMINATION AND THE RIGHT TO COUNSEL.25 (B) IF THE COURT FINDS, BY A PREPONDERANCE OF EVIDENCE, THAT A
26 DEFENDANT WAS SUBJECTED TO A CUSTODIAL INTERROGATION IN VIOLATION OF
27 SUBSECTION (A) OF THIS SECTION, A STATEMENT MADE BY THE DEFENDANT
28 FOLLOWING THE CUSTODIAL INTERROGATION, EVEN IF OTHERWISE IN COMPLIANCE
29 WITH THIS SECTION, IS PRESUMED INADMISSIBLE AS EVIDENCE AGAINST THE
30 DEFENDANT.31 (C) A PRESUMPTION OF INADMISSIBILITY UNDER THIS SECTION MAY BE
32 OVERCOME BY A PREPONDERANCE OF EVIDENCE THAT:

33 (1) A STATEMENT WAS VOLUNTARY AND RELIABLE; AND

1 (2) LAW ENFORCEMENT OFFICERS HAD GOOD CAUSE FOR FAILURE TO
2 RECORD THE ENTIRE INTERROGATION, INCLUDING EVIDENCE THAT:

3 (I) THE DEFENDANT REFUSED TO HAVE THE INTERROGATION
4 ELECTRONICALLY RECORDED AND THE REFUSAL WAS ELECTRONICALLY RECORDED;
5 OR

6 (II) THE FAILURE TO ELECTRONICALLY RECORD THE ENTIRE
7 INTERROGATION WAS THE RESULT OF EQUIPMENT FAILURE AND OBTAINING
8 REPLACEMENT EQUIPMENT WAS NOT FEASIBLE.

9 (D) THIS SECTION DOES NOT PRECLUDE THE ADMISSION OF A STATEMENT BY
10 A DEFENDANT THAT IS:

11 (1) MADE IN OPEN COURT AT TRIAL, BEFORE A GRAND JURY, OR AT A
12 PRELIMINARY HEARING;

13 (2) MADE SPONTANEOUSLY AND NOT IN RESPONSE TO A QUESTION;

14 (3) MADE AFTER QUESTIONING THAT IS ROUTINELY ASKED DURING
15 THE PROCESSING OF AN ARREST;

16 (4) MADE DURING A CUSTODIAL INTERROGATION CONDUCTED
17 OUT-OF-STATE;

18 (5) OBTAINED BY A FEDERAL LAW ENFORCEMENT OFFICER IN A
19 FEDERAL PLACE OF DETENTION;

20 (6) GIVEN AT A TIME WHEN THE INTERROGATORS ARE UNAWARE THAT
21 THE DEFENDANT IS SUSPECTED OF A CRIME OF VIOLENCE; OR

22 (7) USED FOR IMPEACHMENT OF THE DEFENDANT AND NOT AS
23 SUBSTANTIVE EVIDENCE.

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

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

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

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

35 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
36 October 1, 2006.

