

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE

House Bill 414
 Judiciary

(Delegate Vallario, *et al.*)

Criminal Procedure - Custodial Interrogation - Electronic Recordation

This bill establishes that in a prosecution for a crime of violence, an oral, written, or sign language statement made by a defendant during a custodial interrogation is presumed inadmissible as evidence against the defendant unless an electronic recording meeting specified standards is made of the entire custodial interrogation.

The bill applies prospectively to statements made on or after the bill's October 1, 2006 effective date.

Fiscal Summary

State Effect: General fund expenditures increase by an estimated \$86,900 in FY 2007 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 2010.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	86,900	2,000	2,000	92,300	2,100
Net Effect	(\$86,900)	(\$2,000)	(\$2,000)	(\$92,300)	(\$2,100)

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: A “custodial interrogation” is an interrogation by a police officer in a place of detention in which the individual being interrogated is not free to leave. An “electronic recording” means a motion picture, audiotape, videotape, or digital recording.

In order for the electronic recording to be admissible, it 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.

If a court finds by a preponderance of the evidence that a defendant was subjected to a custodial interrogation in violation of these provisions, a statement made by a defendant following the interrogation, even if otherwise in compliance with these provisions, is presumed inadmissible.

Presumptions of inadmissibility may be overcome by a preponderance of evidence that (1) the statement was voluntary and reliable; and (2) law enforcement officers had good cause for failure to record the entire interrogation, including equipment failure and the defendant’s refusal to have the interrogation electronically recorded, so long as the refusal was electronically recorded.

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;
- obtained by a federal law enforcement officer in a federal place of detention;
- given at a time when the interrogators are unaware that the defendant is suspected of a crime of violence; or
- used for impeachment of the defendant and not as substantive evidence.

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) anything the individual says may be used against the individual in a court of law; (3) the right to an attorney and the right to have the attorney present during interrogation; and (4) the right to have an attorney appointed for the individual if the individual is unable to afford one.

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, District of Columbia, Illinois, Massachusetts, Minnesota, New Jersey, New Mexico, and Texas 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; Kansas City, Missouri; and San Diego, California also require electronic recording. Legislation concerning the mandatory electronic recording of interrogations was introduced in 20 states and the District of Columbia in 2005.

State Expenditures: This bill could increase general fund expenditures by \$86,935 in fiscal 2007. This includes the purchase of four VCRs, one monitor and a mounting station, and five video cameras, for each facility, at a cost of \$65,435, and \$5,000 for videotapes. It also includes the purchase of five high-speed VCR duplicating machines (one per region) at a cost of \$5,000 to facilitate multiple duplications of the interrogations (one copy for the State and one copy for the defense) and two audio tape recorders per facility at a cost of \$11,500, as backup to the video recorders. It is anticipated that the interrogations will be both audio and video recorded to guarantee that there is some record of the interrogation.

The estimate is 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.

92 VCRs (4 for each facility)	\$13,800
23 Monitors and Mounting Stations	5,750
115 Video Cameras (5 for each facility)	45,885
Cost of Videotapes	5,000
VCR Duplicating Machines (1 per region)	5,000
Tape Recorders (2 for each facility)	<u>11,500</u>
Total	\$86,935

Local Expenditures: Based on a sampling of local jurisdictions, the bill may 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State’s Attorneys’ Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, Department of State Police, Center for Policy Alternatives, Department of Legislative Services

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nas/jr

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