

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE

House Bill 29
 Judiciary

(Delegates Arnick and Ramirez)

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

This bill requires a “custodial interrogation” in cases involving a capital offense that occurs at a “place of detention” to be electronically recorded, unless there is a lack of proper equipment or time is of the essence.

The bill takes effect October 1, 2007.

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: The bill is consistent with current practices in certain local jurisdictions.
This bill may impose a mandate on a unit of local government.

Small Business Effect: None.

Analysis

Bill Summary: This bill requires a “custodial interrogation” in cases involving a capital offense that occurs 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 bill creates exceptions for lack of proper equipment or the need for haste. 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.

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 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

videotaping. Legislation concerning the mandatory electronic recording of interrogations was introduced in 20 states and the District of Columbia in 2005.

State Fiscal Effect: 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: HB 46 of 2005, an identical bill, received an unfavorable report from the House Judiciary Committee. HB 118 of 2004 received an unfavorable report from the House Judiciary Committee. HB 387 of 2003, a similar bill, 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): City of College Park, Cecil County, Montgomery County, Prince George's County, Harford County, St. Mary's County, Office of the Public Defender, Department of State Police, Carroll County, Center for Policy Alternatives, Department of Legislative Services.

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