

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1012
Judiciary

(Delegates Conaway and Anderson)

Juvenile Law - Custodial Interrogation of a Minor - Recording Restrictions

This bill prohibits a police officer from making an electronic recording of a custodial interrogation of a minor without the consent of the minor's parent or guardian. A statement made by a minor during a custodial interrogation that was recorded in violation of this prohibition is presumed involuntary and is inadmissible as evidence against the minor in any criminal or juvenile proceeding. A custodial interrogation is defined as retaining its judicially determined meaning.

The bill only applies prospectively to statements made on or after the bill's October 1, 2009 effective date.

Fiscal Summary

State Effect: None. The bill does not directly affect State operations or finances.

Local Effect: None. The bill does not directly affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law: Maryland law does not require or prohibit recorded interrogations of minors. The practice varies throughout the State.

While custody most commonly occurs when a suspect is arrested or otherwise detained, the Supreme Court held in *Orozco v. Texas*, 394 U.S. 324 (1969) that any significant

deprivation of freedom is considered custody. In *Rhode Island v. Innis*, 446 U.S. 291 (1980), the Supreme Court held that an interrogation is not limited to express questioning, but also includes its functional equivalent, or words or actions by law enforcement that are known or should be known to be likely to elicit an incriminating response from the suspect.

Chapters 359 and 360 of 2008 declared that it is the public policy of the State that (1) a law enforcement unit that regularly utilizes one or more interrogation rooms capable of creating audiovisual recordings of custodial interrogations shall make reasonable efforts to create an audiovisual recording of a custodial interrogation of a criminal suspect in connection with a case involving murder, rape, sexual offense in the first degree, or sexual offense in the second degree, whenever possible; and (2) a law enforcement unit that does not regularly utilize one or more interrogation rooms capable of creating audiovisual recordings of custodial interrogations shall make reasonable efforts to create an audio recording of a custodial interrogation of a criminal suspect in connection with a case involving murder, rape, sexual offense in the first degree, or sexual offense in the second degree, wherever possible.

Background: Interest in recorded interrogations of minors has increased following the 2002 release of 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.

Although not specific to minors, at least nine states (Alaska, Illinois, Maine, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, and Wisconsin), and the District of Columbia have mandatory recording laws. 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. Also, approximately 500 local jurisdictions have voluntarily adopted recording policies.

Additional Information

Prior Introductions: HB 1072 of 2008 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Charles County, Frederick County, Montgomery County, Somerset County, Baltimore City, Maryland State Department of Education, Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Department of State Police, National Association of Criminal Defense Lawyers, Department of Legislative Services

Fiscal Note History: First Reader - March 11, 2009
mcp/kdm

Analysis by: Jennifer K. Botts

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