

SENATE BILL 76

E2

8lr1097
CF HB 6

By: **Senators Conway, Della, Exum, Gladden, Jones, Kelley, McFadden,
Pinsky, Pugh, and Raskin**

Introduced and read first time: January 14, 2008

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Custodial Interrogation – Electronic Recordation**

3 FOR the purpose of establishing that it is the public policy of the State that custodial
4 interrogations of criminal suspects be recorded whenever practicable; requiring
5 that an electronic recording be made of certain custodial interrogations except
6 under certain circumstances; establishing that the State shall bear the burden
7 of proving, by a preponderance of the evidence, that a certain exception to the
8 requirement to record a custodial interrogation is applicable; requiring the
9 State to file a certain notice under certain circumstances; requiring the notice to
10 contain certain information; requiring the recording of the making and signing
11 of a certain writing under certain circumstances; requiring a court to make a
12 certain finding under certain circumstances; exempting recordings made in
13 accordance with this Act from certain provisions of law; defining certain terms;
14 providing that the Governor’s Office of Crime Control and Prevention shall work
15 with State and local law enforcement agencies to ensure that the State secures
16 certain funding and develop a program to assist the agencies in funding
17 compliance with this Act; providing for the application of this Act; providing for
18 a delayed effective date; and generally relating to custodial interrogations of
19 certain individuals.

20 BY adding to

21 Article – Criminal Procedure

22 Section 2–401 and 2–402 to be under the new subtitle “Subtitle 4. Custodial
23 Interrogation”

24 Annotated Code of Maryland

25 (2001 Volume and 2007 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Criminal Procedure**2 **SUBTITLE 4. CUSTODIAL INTERROGATION.**3 **2-401.**

4 (A) (1) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE
5 MEANINGS INDICATED.

6 (2) “CUSTODIAL INTERROGATION” RETAINS ITS JUDICIALLY
7 DETERMINED MEANING.

8 (3) “ELECTRONIC RECORDING” MEANS A VIDEOTAPE OR DIGITAL
9 RECORDING THAT INCLUDES BOTH AUDIO AND VISUAL REPRESENTATIONS.

10 (4) (I) “PLACE OF DETENTION” MEANS A GOVERNMENTAL
11 FACILITY UNDER THE CONTROL OF A LAW ENFORCEMENT UNIT AT WHICH A
12 PERSON MAY BE DETAINED IN CONNECTION WITH CRIMINAL CHARGES AGAINST
13 THE PERSON.

14 (II) “PLACE OF DETENTION” INCLUDES A POLICE STATION,
15 STATE PRISON FACILITY, OR LOCAL PRISON FACILITY.

16 (B) IT IS THE PUBLIC POLICY OF THE STATE THAT CUSTODIAL
17 INTERROGATIONS OF CRIMINAL SUSPECTS BE RECORDED WHENEVER
18 PRACTICABLE.

19 (C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, AN
20 ELECTRONIC RECORDING SHALL BE MADE OF A CUSTODIAL INTERROGATION
21 CONDUCTED IN A PLACE OF DETENTION WHEN THE INTERROGATION IS IN
22 CONNECTION WITH A MURDER, RAPE, SEXUAL OFFENSE IN THE FIRST DEGREE,
23 OR SEXUAL OFFENSE IN THE SECOND DEGREE.

24 (D) (1) ELECTRONIC RECORDING OF A STATEMENT UNDER
25 SUBSECTION (C) OF THIS SECTION IS NOT REQUIRED IF:

26 (I) THE STATEMENT IS MADE:

27 1. SPONTANEOUSLY OUTSIDE THE COURSE OF A
28 CUSTODIAL INTERROGATION;

29 2. IN RESPONSE TO QUESTIONING THAT IS
30 ROUTINELY CONDUCTED DURING THE PROCESSING OF AN ARREST; OR

1 **3. AT A TIME WHEN THE PERSON BEING**
2 **INTERROGATED IS NOT A SUSPECT FOR THE CRIME TO WHICH THE STATEMENT**
3 **RELATES WHILE THE PERSON IS BEING INTERROGATED FOR A CRIME OTHER**
4 **THAN A CRIME SPECIFIED IN SUBSECTION (C) OF THIS SECTION; OR**

5 **(II) 1. THE CUSTODIAL INTERROGATION IS CONDUCTED**
6 **OUT OF STATE;**

7 **2. THE CUSTODIAL INTERROGATION DURING WHICH**
8 **A STATEMENT IS GIVEN OCCURS AT A TIME WHEN THE INTERROGATOR HAS NO**
9 **KNOWLEDGE THAT THE PERSON BEING INTERROGATED MAY HAVE BEEN**
10 **INVOLVED IN A CRIME FOR WHICH RECORDING IS REQUIRED; OR**

11 **3. THE INTERROGATOR IN GOOD FAITH FAILS TO**
12 **MAKE AN ELECTRONIC RECORDING OF THE CUSTODIAL INTERROGATION**
13 **BECAUSE:**

14 **A. THE RECORDING EQUIPMENT DOES NOT**
15 **FUNCTION AND OTHER EQUIPMENT IS NOT READILY AVAILABLE;**

16 **B. THE INTERROGATOR INADVERTENTLY FAILS TO**
17 **OPERATE THE EQUIPMENT PROPERLY; OR**

18 **C. THE EQUIPMENT MALFUNCTIONS OR STOPS**
19 **OPERATING WITHOUT THE INTERROGATOR'S KNOWLEDGE.**

20 **(2) THE STATE SHALL BEAR THE BURDEN OF PROVING, BY A**
21 **PREPONDERANCE OF THE EVIDENCE, THAT AN EXCEPTION LISTED IN**
22 **PARAGRAPH (1) OF THIS SUBSECTION IS APPLICABLE.**

23 **(E) (1) IF THE STATE INTENDS TO RELY ON AN EXCEPTION SET**
24 **FORTH IN SUBSECTION (D) OF THIS SECTION IN OFFERING A DEFENDANT'S**
25 **UNRECORDED STATEMENT INTO EVIDENCE, THE STATE SHALL FILE, WITHOUT**
26 **REQUEST UNDER THE MARYLAND RULES, A NOTICE OF INTENT TO RELY ON THE**
27 **UNRECORDED STATEMENT AS PART OF THE STATE'S REQUIRED DISCOVERY.**

28 **(2) A NOTICE FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION**
29 **SHALL CONTAIN:**

30 **(I) THE SPECIFIC EXCEPTION ON WHICH THE STATE**
31 **INTENDS TO RELY;**

32 **(II) THE SPECIFIC PLACE AND TIME AT WHICH THE**
33 **DEFENDANT MADE THE STATEMENT; AND**

1 **(III) THE NAMES AND ADDRESSES OF THE WITNESSES ON**
2 **WHOM THE STATE INTENDS TO RELY TO ESTABLISH THE EXCEPTION.**

3 **(F) IF A DEFENDANT ELECTS TO MAKE OR SIGN A WRITTEN STATEMENT**
4 **DURING THE COURSE OF A CUSTODIAL INTERROGATION, THE MAKING AND**
5 **SIGNING OF THE WRITING SHALL BE RECORDED IN ACCORDANCE WITH THIS**
6 **SECTION UNLESS AN EXCEPTION SET FORTH IN SUBSECTION (D) OF THIS**
7 **SECTION APPLIES.**

8 **(G) IF, AFTER A HEARING ON THE ISSUE, THE COURT DETERMINES THAT**
9 **A STATEMENT WAS MADE BUT WAS NOT RECORDED IN VIOLATION OF THIS**
10 **SECTION, AND NO EXCEPTION TO THE RECORDING REQUIREMENT APPLIES, THE**
11 **COURT SHALL FIND THAT THE STATEMENT IS INADMISSIBLE.**

12 **2-402.**

13 **RECORDINGS MADE IN ACCORDANCE WITH THE PROVISIONS OF THIS**
14 **SUBTITLE ARE EXEMPT FROM THE MARYLAND WIRETAPPING AND ELECTRONIC**
15 **SURVEILLANCE ACT.**

16 SECTION 2. AND BE IT FURTHER ENACTED, That the Governor's Office of
17 Crime Control and Prevention shall:

18 (1) work with State and local law enforcement agencies to ensure that
19 Maryland secures all federal, State, and local funding available for law enforcement
20 improvement; and

21 (2) develop a program to assist State and local law enforcement
22 agencies in funding compliance with this subtitle, including funding for training and
23 equipment.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be
25 construed to apply only prospectively and may not be applied or interpreted to have
26 any effect on or application to any statement obtained from a defendant before the
27 effective date of this Act.

28 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2010.