

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 76

(Senator Conway, *et al.*)

Judicial Proceedings

Judiciary

Criminal Procedure - Custodial Interrogation - Recordation

This bill creates a two-tiered public policy statement declaring that law enforcement units must make reasonable efforts to record custodial interrogations of criminal suspects in connection with cases involving murder, rape, and first and second degree sexual offenses whenever possible. Under the policy statement, a police department that regularly uses interrogation rooms capable of creating audiovisual recordings is to create audiovisual recordings, and a department that does not regularly utilize such interrogation rooms is to create audio recordings. The bill specifies that such recordings are exempt from the Maryland Wiretapping and Electronic Surveillance Act. The bill requires the Governor's Office of Crime Control and Prevention (GOCCP) to annually report to the General Assembly on the progress of jurisdictions in establishing interrogation rooms capable of making audiovisual recordings and to give such reports at StateStat meetings. GOCCP must also work with State and local law enforcement agencies to secure all funding available for law enforcement improvement and to develop a program to assist local and State law enforcement agencies to fund the establishment and operation of interrogation rooms capable of creating audiovisual recordings of custodial interrogations.

Fiscal Summary

State Effect: None. The bill does not require recordings.

Local Effect: The reasonable efforts required under the bill are consistent with practices in many local jurisdictions.

Small Business Effect: None.

Analysis

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) the right to an attorney and the right to have the attorney present during interrogation; and (3) the right to have an attorney appointed for the individual if the individual is unable to afford one. The individual must also be informed that anything the individual says may be used against him or her in a court of law.

In *Illinois v. Perkins*, 496 U.S. 292 (1990), the Supreme Court confirmed that Miranda warnings are only required whenever a suspect is subjected to custodial interrogation. 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.

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, Illinois, Maine, Minnesota, New Hampshire, New Jersey, New Mexico, Wisconsin, and the District of Columbia 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. Approximately 500 local jurisdictions

have voluntarily adopted recording policies, including Broward County, Florida; Denver, Colorado; San Diego, California; and Houston, Austin, and Dallas, Texas. Legislation concerning the mandatory electronic recording of interrogations was introduced in 20 states and the District of Columbia in 2005 or 2006, and 23 states in 2007.

State Expenditures:

The *Maryland State Police* advises there would be no effect as the bill does not mandate recordings.

The *Department of Public Safety and Correctional Services* advises it does not regularly utilize interrogation rooms capable of creating audiovisual recordings. However, as DPSCS officers already make audio recordings of interrogations, the department would be able to comply with the bill with existing resources.

The *Governor's Office of Crime Control and Prevention* anticipates that achieving audiovisual recordings would result in significant expenditures to local governments and State law enforcement agencies. GOCCP should be able to assist in securing funding for this purpose, as well as, handle any reporting requirements with existing resources.

The *Department of National Resources* and the *Maryland Department of Transportation* advise that, due to the limited scope of the crimes included under this bill, they anticipate minimal to no fiscal impact.

Local Fiscal Effect: Baltimore City advises it does not regularly utilize interrogation rooms capable of creating audiovisual recordings and its officers already make audio recordings of many interrogations. Therefore, Baltimore City would be able to comply with the bill with existing resources. Prince George's County and Montgomery County currently videotape interrogations.

Additional Information

Prior Introductions: HB 67 of 2007, a similar bill, received a hearing in the House Judiciary Committee but was withdrawn. The cross filed bill, SB 193 of 2007, received a favorable with amendments report from the Senate Judicial Proceedings Committee but failed on second reading. HB 414 of 2006, a similar bill, received a hearing in Judiciary but was withdrawn.

Cross File: HB 6 (Delegate Anderson, *et al.*) – Judicial Proceedings.

Information Source(s): State's Attorneys' Association, Montgomery County, Prince George's County, Caroline County, Calvert County, Baltimore City, Judiciary (Administrative Office of the Courts), Department of Natural Resources, Department of State Police, Governor's Office of Crime Control and Prevention, Maryland Department of Transportation, Department of Public Safety and Correctional Services, Department of Legislative Services

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