

# HOUSE BILL No. 4909

June 12, 2007, Introduced by Reps. Tobocman, Hammon, Virgil Smith, Scott, Alma Smith, Condino, Espinoza, Johnson, Melton, Bieda, Meisner and David Law and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"  
(MCL 760.1 to 777.69) by adding section 7 to chapter III.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER III

SEC. 7. (1) A LAW ENFORCEMENT OFFICIAL SHALL NOT QUESTION AN INDIVIDUAL WHO IS IN CUSTODY REGARDING HIS OR HER ALLEGED INVOLVEMENT IN THE COMMISSION OF A MAJOR FELONY UNLESS THE QUESTIONING SESSION IS ELECTRONICALLY RECORDED IN ITS ENTIRETY.

(2) A LAW ENFORCEMENT OFFICIAL MAY MAKE AN IN-CUSTODY ELECTRONIC RECORDING WITHOUT THE KNOWLEDGE OR CONSENT OF THE INDIVIDUAL BEING QUESTIONED.

(3) A DEFENDANT MAY CHALLENGE THE ADMISSIBILITY OF EVIDENCE OBTAINED IN VIOLATION OF SUBSECTION (1) AT ANY TIME BEFORE THE DATE OF TRIAL BY PROVIDING 48 HOURS' NOTICE TO THE PROSECUTION OF HIS OR HER INTENT TO SEEK EXCLUSION OF THAT EVIDENCE FOR FAILING TO RECORD

1 THE SESSION.

2 (4) A STATEMENT OBTAINED IN VIOLATION OF SUBSECTION (1) OR  
3 EVIDENCE OBTAINED AS A RESULT OF THAT STATEMENT SHALL BE EXCLUDED  
4 AS EVIDENCE IN A CRIMINAL PROCEEDING ABSENT A SHOWING OF GOOD CAUSE  
5 BY THE PARTY SEEKING TO INTRODUCE THE EVIDENCE FOR FAILING TO  
6 RECORD THE SESSION.

7 (5) AN ELECTRONIC RECORDING REQUIRED UNDER THIS SECTION SHALL  
8 BE PRESERVED UNTIL SUCH TIME AS THE DEFENDANT'S CONVICTION FOR ANY  
9 OFFENSE RELATING TO THE STATEMENT IS FINAL AND ALL DIRECT AND  
10 HABEAS CORPUS APPEALS ARE EXHAUSTED, OR THE PROSECUTION OF THAT  
11 OFFENSE IS BARRED BY LAW.

12 (6) AS USED IN THIS SECTION:

13 (A) "ELECTRONICALLY RECORDED" MEANS RECORDED BY USE OF A  
14 MOTION PICTURE, AUDIOTAPE, VIDEOTAPE, DIGITAL RECORDING, OR OTHER  
15 SIMILAR TECHNOLOGY.

16 (B) "LAW ENFORCEMENT OFFICIAL" MEANS ANY OF THE FOLLOWING:

17 (i) A PEACE OFFICER.

18 (ii) THE ATTORNEY GENERAL OR HIS OR HER ASSISTANT, A COUNTY  
19 PROSECUTING ATTORNEY OR HIS OR HER ASSISTANT, OR AN ATTORNEY  
20 REPRESENTING A POLITICAL SUBDIVISION OF THIS STATE OR HIS OR HER  
21 ASSISTANT.

22 (iii) A PERSON ACTING UPON THE DIRECTION OF AN INDIVIDUAL  
23 DESCRIBED IN SUBPARAGRAPH (i) OR (ii).

24 (C) "MAJOR FELONY" MEANS A FELONY PUNISHABLE BY IMPRISONMENT  
25 FOR LIFE OR BY IMPRISONMENT FOR LIFE OR ANY TERM OF YEARS OR BY  
26 IMPRISONMENT FOR AT LEAST 20 YEARS.

27 (D) "PEACE OFFICER" MEANS ANY OF THE FOLLOWING:

1           (i) A POLICE OFFICER OF THIS STATE OR A POLITICAL SUBDIVISION  
2 OF THIS STATE.

3           (ii) A COUNTY SHERIFF OR HIS OR HER DEPUTY.

4           (iii) A PUBLIC SAFETY OFFICER OF A COLLEGE OR UNIVERSITY.

5           (iv) A CONSERVATION OFFICER OF THE DEPARTMENT OF NATURAL  
6 RESOURCES OR THE DEPARTMENT OF ENVIRONMENTAL QUALITY.