

SUBSTITUTE FOR
HOUSE BILL NO. 5763

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
(MCL 760.1 to 777.69) by adding sections 7, 8, 9, 10, and 11 to
chapter III.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER III

SEC. 7. AS USED IN THIS SECTION AND SECTIONS 8 TO 10 OF THIS
CHAPTER:

(A) "CUSTODIAL DETENTION" MEANS AN INDIVIDUAL'S BEING IN A
PLACE OF DETENTION BECAUSE A LAW ENFORCEMENT OFFICIAL HAS TOLD THE
INDIVIDUAL THAT HE OR SHE IS UNDER ARREST OR BECAUSE THE
INDIVIDUAL, UNDER THE TOTALITY OF THE CIRCUMSTANCES, REASONABLY
COULD HAVE BELIEVED THAT HE OR SHE IS UNDER A LAW ENFORCEMENT

1 OFFICIAL'S CONTROL AND IS NOT FREE TO LEAVE.

2 (B) "INTERROGATION" MEANS QUESTIONING IN A CRIMINAL
3 INVESTIGATION THAT MAY ELICIT A SELF-INCRIMINATING RESPONSE FROM AN
4 INDIVIDUAL AND INCLUDES A LAW ENFORCEMENT OFFICIAL'S WORDS OR
5 ACTIONS THAT THE LAW ENFORCEMENT OFFICIAL SHOULD KNOW ARE
6 REASONABLY LIKELY TO ELICIT A SELF-INCRIMINATING RESPONSE FROM THE
7 INDIVIDUAL.

8 (C) "LAW ENFORCEMENT OFFICIAL" MEANS ANY OF THE FOLLOWING:

9 (i) A POLICE OFFICER OF THIS STATE OR A POLITICAL SUBDIVISION
10 OF THIS STATE.

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

12 (iii) A PROSECUTING ATTORNEY.

13 (iv) A PUBLIC SAFETY OFFICER OF A COLLEGE OR UNIVERSITY.

14 (v) A CONSERVATION OFFICER OF THE DEPARTMENT OF NATURAL
15 RESOURCES AND ENVIRONMENT.

16 (vi) AN INDIVIDUAL ACTING UNDER THE DIRECTION OF A LAW
17 ENFORCEMENT OFFICIAL DESCRIBED IN SUBPARAGRAPHS (i) TO (v).

18 (D) "MAJOR FELONY" MEANS A FELONY PUNISHABLE BY IMPRISONMENT
19 FOR LIFE, FOR LIFE OR ANY TERM OF YEARS, OR FOR A STATUTORY MAXIMUM
20 OF 20 YEARS OR MORE, OR A VIOLATION OF SECTION 520D OF THE MICHIGAN
21 PENAL CODE, 1931 PA 328, MCL 750.520D.

22 (E) "MAJOR FELONY RECORDING" MEANS THE INTERROGATION RECORDING
23 REQUIRED BY SECTION 8 OF THIS CHAPTER OR A DUPLICATE OF THAT
24 RECORDING.

25 (F) "PLACE OF DETENTION" MEANS A POLICE STATION, CORRECTIONAL
26 FACILITY, OR PRISONER HOLDING FACILITY OR ANOTHER GOVERNMENTAL
27 FACILITY WHERE AN INDIVIDUAL MAY BE HELD IN CONNECTION WITH A

1 CRIMINAL CHARGE THAT HAS BEEN OR MAY BE FILED AGAINST THE
2 INDIVIDUAL.

3 SEC. 8. (1) A LAW ENFORCEMENT OFFICIAL INTERROGATING AN
4 INDIVIDUAL IN CUSTODIAL DETENTION REGARDING THE INDIVIDUAL'S
5 INVOLVEMENT IN THE COMMISSION OF A MAJOR FELONY SHALL MAKE A TIME-
6 STAMPED, AUDIOVISUAL RECORDING OF THE ENTIRE INTERROGATION. A MAJOR
7 FELONY RECORDING SHALL INCLUDE THE LAW ENFORCEMENT OFFICIAL'S
8 NOTIFICATION TO THE INDIVIDUAL OF THE INDIVIDUAL'S MIRANDA RIGHTS.

9 (2) AN INDIVIDUAL WHO BELIEVES THE INDIVIDUAL'S INTERROGATION
10 IS BEING RECORDED MAY OBJECT TO HAVING THE INTERROGATION RECORDED.
11 THE INDIVIDUAL'S OBJECTION SHALL BE DOCUMENTED EITHER BY THE
12 INDIVIDUAL'S OBJECTION STATED ON THE RECORDING OR THE INDIVIDUAL'S
13 SIGNATURE ON A DOCUMENT STATING THE OBJECTION. IF THE INDIVIDUAL
14 REFUSES TO DOCUMENT THE OBJECTION EITHER BY RECORDING OR SIGNATURE,
15 A LAW ENFORCEMENT OFFICIAL SHALL DOCUMENT THE OBJECTION BY A
16 RECORDING OR SIGNED DOCUMENT. A MAJOR FELONY RECORDING MAY BE MADE
17 WITHOUT THE CONSENT OR KNOWLEDGE OF, OR DESPITE THE OBJECTION OF,
18 THE INDIVIDUAL BEING INTERROGATED.

19 (3) A MAJOR FELONY RECORDING SHALL BE PRODUCED USING EQUIPMENT
20 AND PROCEDURES THAT ARE DESIGNED TO PREVENT ALTERATION OF THE
21 RECORDING'S AUDIO OR VISUAL RECORD.

22 (4) PURSUANT TO ANY REQUEST OF DISCOVERY, THE PROSECUTOR SHALL
23 PROVIDE A COPY OF THE RECORDED STATEMENT TO THE DEFENSE COUNSEL OF
24 RECORD OR TO THE DEFENDANT IF HE OR SHE IS NOT REPRESENTED BY
25 DEFENSE COUNSEL. THE COURT SHALL NOT REQUIRE THE POLICE OR THE
26 PROSECUTOR TO PREPARE OR PAY FOR A TRANSCRIPT OF A RECORDED
27 STATEMENT. A COURT OR THE DEFENSE MAY HAVE A TRANSCRIPT PREPARED AT

1 ITS OWN EXPENSE.

2 (5) PRIOR TO CONVICTION OR ACQUITTAL, A STATEMENT RECORDED
3 UNDER THIS SECTION IS EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF
4 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

5 SEC. 9. ANY FAILURE TO RECORD A STATEMENT OR TO PRESERVE A
6 RECORDED STATEMENT AS REQUIRED BY SECTION 8 OF THIS CHAPTER DOES
7 NOT PREVENT ANY LAW ENFORCEMENT OFFICER PRESENT DURING THE TAKING
8 OF THE STATEMENT FROM TESTIFYING IN COURT AS TO THE CIRCUMSTANCES
9 AND CONTENT OF THE INDIVIDUAL'S STATEMENT IF THE COURT DETERMINES
10 THAT THE STATEMENT IS OTHERWISE ADMISSIBLE. HOWEVER, THE JURY SHALL
11 BE INSTRUCTED THAT IT IS THE LAW OF THIS STATE TO RECORD STATEMENTS
12 OF AN INDIVIDUAL IN CUSTODIAL DETENTION WHO IS UNDER INTERROGATION
13 FOR A MAJOR FELONY AND THAT THE JURY MAY CONSIDER THE ABSENCE OF A
14 RECORDING IN EVALUATING THE EVIDENCE RELATING TO THE INDIVIDUAL'S
15 STATEMENT.

16 SEC. 10. A FAILURE TO COMPLY WITH SECTIONS 8 AND 9 OF THIS
17 CHAPTER DOES NOT CREATE A CIVIL CAUSE OF ACTION AGAINST A
18 DEPARTMENT OR INDIVIDUAL. THE REQUIREMENT IN SECTION 8 OF THIS
19 CHAPTER TO PRODUCE A MAJOR FELONY RECORDING IS A DIRECTIVE TO
20 DEPARTMENTS AND LAW ENFORCEMENT OFFICIALS AND NOT A RIGHT CONFERRED
21 ON AN INDIVIDUAL WHO IS INTERROGATED.

22 SEC. 11. (1) THE COMMISSION ON LAW ENFORCEMENT STANDARDS SHALL
23 SET QUALITY STANDARDS FOR THE AUDIOVISUAL RECORDING OF STATEMENTS
24 UNDER THIS CHAPTER AND SHALL CONDUCT AN ASSESSMENT OF THE INITIAL
25 COST NECESSARY FOR LAW ENFORCEMENT AGENCIES TO PURCHASE AUDIOVISUAL
26 RECORDING EQUIPMENT. THE FIRST ASSESSMENT SHALL BE CONDUCTED WITHIN
27 120 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED

1 THIS SECTION. THE COMMISSION ON LAW ENFORCEMENT STANDARDS SHALL
2 CONDUCT SUBSEQUENT ASSESSMENTS REGARDING THE NECESSARY COSTS OF
3 PURCHASING, UPGRADING, OR REPLACING THE EQUIPMENT EVERY 2 YEARS.

4 (2) THE LEGISLATURE SHALL ANNUALLY APPROPRIATE FUNDS TO THE
5 COMMISSION ON LAW ENFORCEMENT STANDARDS IN THE AMOUNT DETERMINED BY
6 THE COMMISSION'S ASSESSMENT PERFORMED UNDER THIS SECTION FOR
7 DISTRIBUTION TO LAW ENFORCEMENT AGENCIES THROUGHOUT THE STATE TO
8 ALLOW THE AGENCIES TO PURCHASE AUDIOVISUAL RECORDING EQUIPMENT FOR
9 PURPOSES OF THIS CHAPTER.

10 (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), LAW
11 ENFORCEMENT AGENCIES SHALL IMPLEMENT SECTIONS 7 TO 10 OF THIS
12 CHAPTER AND THIS SECTION WITHIN 120 DAYS AFTER RECEIVING FUNDS
13 UNDER THIS SECTION FROM THE COMMISSION ON LAW ENFORCEMENT
14 STANDARDS.

15 (4) IF A LAW ENFORCEMENT AGENCY HAS THE AUDIOVISUAL RECORDING
16 EQUIPMENT THAT COMPLIES WITH THE STANDARDS OF THE COMMISSION ON LAW
17 ENFORCEMENT STANDARDS ON THE EFFECTIVE DATE OF THE AMENDATORY ACT
18 THAT ADDED THIS SECTION, THAT LAW ENFORCEMENT AGENCY SHALL COMPLY
19 WITH THE PROVISIONS OF THIS ACT WITHIN 60 DAYS AFTER THE EFFECTIVE
20 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.