

HOUSE BILL No. 5763

January 21, 2010, Introduced by Reps. Tlaib, Smith, Durhal, Nathan, Jackson, Miller, Cushingberry, Constan, Liss, Kandrevas, Melton, Young, Geiss, Switalski, Lipton, Hammel, Terry Brown, Lindberg, Scripps, Donigan, Robert Jones, Meadows, Johnson and Womack 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 sections 7, 8, 9, and 10 to chapter III.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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 REASONABLY BELIEVES THAT HE OR SHE IS UNDER A LAW ENFORCEMENT OFFICIAL'S CONTROL AND IS NOT FREE TO LEAVE.

(B) "INTERROGATION" MEANS QUESTIONING IN A CRIMINAL

1 INVESTIGATION THAT MAY ELICIT A SELF-INCRIMINATING RESPONSE FROM AN
2 INDIVIDUAL AND INCLUDES A LAW ENFORCEMENT OFFICIAL'S WORDS OR
3 ACTIONS THAT THE LAW ENFORCEMENT OFFICIAL SHOULD KNOW ARE
4 REASONABLY LIKELY TO ELICIT A SELF-INCRIMINATING RESPONSE FROM THE
5 INDIVIDUAL.

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

7 (i) A POLICE OFFICER OF THIS STATE OR A POLITICAL SUBDIVISION
8 OF THIS STATE.

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

10 (iii) A PROSECUTING ATTORNEY.

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

12 (v) A CONSERVATION OFFICER OF THE DEPARTMENT OF NATURAL
13 RESOURCES OR DEPARTMENT OF ENVIRONMENTAL QUALITY.

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

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

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

23 (F) "PLACE OF DETENTION" MEANS A POLICE STATION, CORRECTIONAL
24 FACILITY, OR PRISONER HOLDING FACILITY OR ANOTHER GOVERNMENTAL
25 FACILITY WHERE AN INDIVIDUAL MAY BE HELD IN CONNECTION WITH A
26 CRIMINAL CHARGE THAT HAS BEEN OR MAY BE FILED AGAINST THE
27 INDIVIDUAL.

1 SEC. 8. (1) A LAW ENFORCEMENT OFFICIAL INTERROGATING AN
2 INDIVIDUAL IN CUSTODIAL DETENTION REGARDING THE INDIVIDUAL'S
3 INVOLVEMENT IN THE COMMISSION OF A MAJOR FELONY SHALL MAKE A TIME-
4 STAMPED, AUDIOVISUAL RECORDING OF THE ENTIRE INTERROGATION. A MAJOR
5 FELONY RECORDING SHALL INCLUDE THE LAW ENFORCEMENT OFFICIAL'S
6 NOTIFICATION TO THE INDIVIDUAL OF THE INDIVIDUAL'S MIRANDA RIGHTS.
7 A MAJOR FELONY RECORDING MAY BE MADE WITHOUT THE CONSENT OR
8 KNOWLEDGE OF, OR DESPITE THE OBJECTION OF, THE INDIVIDUAL BEING
9 INTERROGATED.

10 (2) AN INDIVIDUAL WHO BELIEVES THE INDIVIDUAL'S INTERROGATION
11 IS BEING RECORDED MAY OBJECT TO HAVING THE INTERROGATION RECORDED.
12 THE INDIVIDUAL'S OBJECTION SHALL BE DOCUMENTED EITHER BY THE
13 INDIVIDUAL'S OBJECTION STATED ON THE RECORDING OR THE INDIVIDUAL'S
14 SIGNATURE ON A DOCUMENT STATING THE OBJECTION. IF THE INDIVIDUAL
15 REFUSES TO DOCUMENT THE OBJECTION EITHER BY RECORDING OR SIGNATURE,
16 A LAW ENFORCEMENT OFFICIAL SHALL DOCUMENT THE OBJECTION BY A
17 RECORDING OR SIGNED DOCUMENT.

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

21 SEC. 9. (1) A STATEMENT MADE DURING AN INTERROGATION DESCRIBED
22 IN SECTION 8 OF THIS CHAPTER THAT IS NOT RECORDED AS REQUIRED UNDER
23 SECTION 8 OF THIS CHAPTER MAY BE USED IN EVIDENCE IF THE COURT
24 FINDS GOOD CAUSE FOR THE FAILURE TO COMPLY WITH THE RECORDING
25 REQUIREMENT.

26 (2) IF THE COURT DOES NOT FIND GOOD CAUSE FOR THE FAILURE TO
27 COMPLY WITH THE RECORDING REQUIREMENT, THE COURT SHALL DETERMINE

1 WHETHER THE STATEMENT IS OTHERWISE ADMISSIBLE, TAKING INTO
2 CONSIDERATION THE FAILURE TO COMPLY WITH SECTION 8 OF THIS CHAPTER.
3 IF THE COURT FINDS THE STATEMENT ADMISSIBLE UNDER THIS SUBSECTION
4 AND THE STATEMENT IS USED IN EVIDENCE, THE COURT SHALL INSTRUCT THE
5 JURY REGARDING THE FACT THAT, IN VIOLATION OF STATE STATUTE, AN
6 AUDIOVISUAL RECORDING WAS NOT MADE OF THE STATEMENT.

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