

RECORDING OF CUSTODIAL INTERROGATIONS

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Senate Bill 152 (Substitute S-1)

Sponsor: Sen. Tonya Schuitmaker

House Committee: Judiciary

Senate Committee: Judiciary

Complete to 10-15-12

A SUMMARY OF SENATE BILL 152 AS PASSED BY THE SENATE 4-14-11

The bill would add several new sections to the Code of Criminal Procedure to, among other things, require that video recordings of interrogations be made in certain criminal investigations (MCL 760.7 et al.).

Applicability. The bill would require an audiovisual recording of an interrogation of an individual who was in custodial detention in a governmental building regarding a crime that was a major felony.

Specifically, the bill would apply to an interrogation involving questioning in a criminal investigation for a major felony that may elicit a self-incriminating response from an individual and includes a law enforcement official's words or actions that the official should know are reasonably likely to elicit a self-incriminating response from the individual.

"Law enforcement official" would mean a state or local police officer (as defined in the Commission on Law Enforcement Standards Act), a county sheriff or deputy, a prosecuting attorney, a college or university public safety officer, a conservation officer of the Department of Natural Resources and Environment, or an individual acting under the direction of any of these officers. "Major felony" would be a felony punishable by life imprisonment, for life or any term of years, or a 3rd degree criminal sexual conduct offense.

The bill applies only to interrogations conducted when an individual is in "custodial detention." "Custodial detention" would mean an individual was in a place of detention because a law enforcement official had told the individual that he or she was under arrest or because the individual, under the totality of the circumstances, reasonably could have believed that he or she was under a law enforcement official's control and was not free to leave. "Place of detention" would mean a police station, correctional facility, or prisoner holding facility or another governmental facility where an individual could be held in connection with a criminal charge that had been or could be filed against the individual.

Audiovisual recordings. A law enforcement officer interrogating an individual in custodial detention about that individual's involvement in the commission of a major felony would be required to make a time-stamped, audiovisual recording of the entire

interrogation – including the notification of Miranda rights to the individual. The recording would have to be produced using equipment and procedures designed to prevent alteration of the recording's audio or visual record.

The Michigan Commission on Law Enforcement Standards (MCOLES) would be required to set quality standards for the audiovisual recording of statements made under the bill's provisions. (Note: the bill does not establish a time period or date by which the standards would be available.) MCOLES would also have to conduct an assessment of the initial cost necessary for law enforcement agencies to purchase the equipment. The first assessment would have to be conducted within 120 days after the bill's effective date. Subsequent assessments regarding the necessary costs of purchasing, upgrading, or replacing the equipment would have to be conducted by MCOLES every two years.

Funding for equipment purchases or upgrades. The Legislature would have to annually appropriate funds to MCOLES in the amount determined by the commission's assessment for the initial purchase of the required equipment and for subsequent upgrades or replacements. The funds would be distributed by MCOLES to law enforcement agencies throughout the state for the purchase audiovisual recording equipment. Any funds appropriated for this purpose would be in addition to the appropriation provided to MCOLES in the immediately preceding fiscal year and shall not be appropriated from the Law Enforcement Officers Training Fund created in Section 13 of Public Act 203 of 1965.

Compliance with the recording mandate. If a law enforcement agency already has audiovisual recording equipment complying with the MCOLES standards on the bill's effective date, then that agency must comply with the recording mandate within 60 days after the bill's effective date. Otherwise, an agency would have to implement the recording requirements within 120 days after receiving funds from MCOLES.

Once an agency had the equipment, failure to comply with the recording and preservation requirements would not create a civil cause of action against a department or individual. The bill would specify that a requirement to produce a major felony recording was a directive to departments and law enforcement officials and not a right conferred on an individual who was interrogated.

Any failure to record a statement or to preserve a recorded statement as required by the bill would not prevent any law enforcement officer present during the taking of the statement from testifying in court as to the circumstances and content of the individual's statement if the court determines that the statement is otherwise admissible. However, the jury would have to be instructed that it is the law of the state to record statements of an individual in custodial detention who is under interrogation for a major felony and that the jury was permitted to consider the absence of a recording in evaluating the evidence relating to the individual's statement. (Note: Section 9 of the bill refers to preservation of the recordings as required by Section 8, but Section 8 does not address the issue.)

Objections to being recorded. The bill would allow an individual who believed the interrogation was being recorded to object to the recording of the interrogation. An objection would have to be documented either by the individual stating the objection on the recording or by the individual putting the objection on a signed document. If the individual refused to document the objection by either of these means, a law enforcement officer would have to do so either by a recording or a signed document.

A major felony recording could be made without the consent or knowledge of, or despite the objection of, the individual being interrogated.

Discovery. If a defendant's attorney requested a copy of the interrogation recording as part of the discovery process, a prosecutor would have to make a copy of the recorded statement available. If the defendant was not represented by counsel, the copy would go to the defendant. A court could not require the police or the prosecutor to either prepare or pay for a transcript of a recorded statement. However, a court or the defense could have transcript prepared at its own expense.

FOIA exemption. Prior to conviction or acquittal, a statement recorded under the bill's provisions would be exempt from disclosure under the Freedom of Information Act.

FISCAL IMPACT:

The fiscal impact to the state is indeterminate at this time. Under the bill, the legislature would be required to annually appropriate funding to the Michigan Commission on Law Enforcement Standards (MCOLES) for distribution to law enforcement agencies throughout the state for the purchase of audio visual recording equipment. The appropriation amount would be determined by MCOLES based on an assessment they conduct of the costs to law enforcement agencies for purchasing the equipment. A cost estimate is not available at this time. Some law enforcement agencies possess similar equipment, which would enable them to meet the requirements of the bill, but many others do not.

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