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BILL ANALYSIS

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Senate Bill 152 (as introduced 2-16-11)
Sponsor: Senator Tonya Schuitmaker
Committee: Judiciary

Date Completed: 3-8-11

CONTENT

The bill would amend the Code of Criminal Procedure to do all of the following:

- **Require a law enforcement official to make an audiovisual recording of an entire interrogation of an individual in custodial detention for questioning of his or her involvement in a major felony.**
- **Require the recording to include the individual's notification of Miranda rights.**
- **Allow an individual to object to having his or her interrogation recorded, and require the objection to be documented.**
- **Allow a major felony recording to be made without the consent or knowledge of, or despite the objection of the person being interrogated.**
- **Require a copy of a recorded statement to be provided to the defense pursuant to a discovery request.**
- **Exempt a recorded statement from public disclosure before conviction or acquittal.**
- **Specify that failure to record a statement would not prevent a law enforcement officer from testifying in court about the statement.**
- **Require a jury to be instructed about the recording requirement and allow a jury to consider the absence of a recording.**
- **Specify that failure to comply with the bill would not create a civil cause of action.**
- **Require the Michigan Commission on Law Enforcement Standards (MCOLES) to establish quality standards and conduct cost assessments.**
- **Require the Legislature to appropriate funds to MCOLES for distribution to law enforcement agencies for the purchase of audiovisual recording equipment.**
- **Require law enforcement agencies to implement the bill's requirements within 120 days after receiving funds from MCOLES, or within 60 days after the bill's effective date if they already had sufficient equipment.**

Definitions

"Interrogation" would mean questioning in a criminal investigation that may elicit a self-incriminating response from an individual, and would include a law enforcement official's words or actions that the official should know are reasonably likely to elicit a self-incriminating response.

"Custodial detention" would mean 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 believe that he or she is under a law enforcement official's control, and is 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 may be held in connection with a criminal charge that has been or may be filed against the individual.

"Major felony" would mean a felony punishable by imprisonment for life, for life or any term of years, or for a statutory maximum of 20 years or more, or third-degree criminal sexual conduct (which is punishable by up to 15 years' imprisonment).

"Law enforcement official" would mean any of the following:

- A police officer of this State or a political subdivision of the State.
- A county sheriff or his or her deputy.
- A prosecuting attorney.
- A public safety officer of a college or university.
- A conservation officer of the Department of Natural Resources and Environment.
- An individual acting under the direction of one of those law enforcement officials.

Recording Requirement

Under the bill, a law enforcement official interrogating an individual in custodial detention regarding the individual's involvement in the commission of a major felony would have to make a time-stamped, audiovisual recording of the entire interrogation. A major felony recording would have to include the law enforcement official's notification to the individual of his or her Miranda rights.

An individual who believed his or her interrogation was being recorded could object to having it recorded. The objection would have to be documented either by the individual's objection stated on the recording or his or her signature on a document stating the objection. If the individual refused to document his or her objection either by recording or signature, a law enforcement official would have to document the objection by a recording or signed document. A major felony recording could be made without the consent or knowledge of, or despite the objection of, the individual being interrogated.

A major felony recording would have to be produced using equipment and procedures that were designed to prevent alteration of the recording's audio or visual record.

Availability of Recording

Pursuant to any request of discovery, the prosecutor would have to provide a copy of the recorded statement to the defense counsel of record or to the defendant, if he or she were not represented by counsel. The court could not require the police or the prosecutor to prepare or pay for a transcript of a recorded statement. A court or the defense could have a transcript prepared at its own expense.

Before conviction or acquittal, a statement recorded under the bill would be exempt from disclosure under the Freedom of Information Act.

Failure to Record

Any failure to record a statement or to preserve a recorded statement as required under 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 determined that the statement otherwise was admissible.

The jury would have to be instructed, however, that it was the law of this State to record statements of an individual in custodial detention who was under interrogation for a major felony and that the jury could consider the absence of a recording in evaluating the evidence relating to the individual's statement.

Failure to comply with the bill's recording requirements would not create a civil cause of action against a department or individual. The requirement to produce a major felony recording would be a directive to departments and law enforcement officials, and would not be a right conferred on an individual who was interrogated.

MCOLLES Requirements

The Commission on Law Enforcement Standards would have to set quality standards for the audiovisual recording of statements under the bill and would have to conduct an assessment of the initial cost necessary for law enforcement agencies to purchase audiovisual recording equipment. The first assessment would have to be conducted within 120 days after the bill's effective date. The Commission would have to conduct subsequent assessments regarding the necessary costs of purchasing, upgrading, or replacing the equipment every two years.

The Legislature annually would have to appropriate funds to MCOLLES in the amount determined by the Commission's assessment for distribution to law enforcement agencies throughout the State to allow them to purchase audiovisual recording equipment for the purposes of the bill.

Law enforcement agencies would have to implement the bill's requirements within 120 days after receiving these funds from MCOLLES.

If a law enforcement agency had the audiovisual recording equipment that complied with the MCOLLES standards on the bill's effective date, that agency would have to comply with the bill within 60 days after its effective date.

Proposed MCL 763.7-763.11

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate, but potentially substantial, fiscal impact on the State. The Michigan Commission on Law Enforcement Standards would be required to do a cost assessment of implementing the bill's provisions. To date, MCOLLES has not offered an estimate of the costs, which the bill would require the Legislature to appropriate. Among the major felonies that would require a recorded interrogation with an arrested individual, the Michigan uniform crime report reflects that in 2009 there were 223 arrests for homicide, 234 for rape, and 206 for kidnapping. Currently, several law enforcement agencies already possess the technical means to fulfill the requirements of the bill; many others do not.

Fiscal Analyst: Bruce Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.