

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 152

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:

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 BELIEVE 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 AS DEFINED IN SECTION 2 OF THE COMMISSION ON LAW
9 ENFORCEMENT STANDARDS ACT, 1965 PA 203, MCL 28.602.

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

11 (iii) A PROSECUTING ATTORNEY.

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

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

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

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

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

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

1 INDIVIDUAL.

2 SEC. 8. (1) THIS SECTION APPLIES IF THE LAW ENFORCEMENT AGENCY
3 HAS AUDIOVISUAL RECORDING EQUIPMENT THAT IS OPERATIONAL OR
4 ACCESSIBLE AS PROVIDED IN SECTION 11(3) OR (4) OR UPON THE
5 EXPIRATION OF THE RELEVANT TIME PERIODS SET FORTH IN SECTION 11(3)
6 OR (4), WHICHEVER OCCURS FIRST.

7 (2) A LAW ENFORCEMENT OFFICIAL INTERROGATING AN INDIVIDUAL IN
8 CUSTODIAL DETENTION REGARDING THE INDIVIDUAL'S INVOLVEMENT IN THE
9 COMMISSION OF A MAJOR FELONY SHALL MAKE A TIME-STAMPED, AUDIOVISUAL
10 RECORDING OF THE ENTIRE INTERROGATION. A MAJOR FELONY RECORDING
11 SHALL INCLUDE THE LAW ENFORCEMENT OFFICIAL'S NOTIFICATION TO THE
12 INDIVIDUAL OF THE INDIVIDUAL'S MIRANDA RIGHTS.

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

23 (4) A MAJOR FELONY RECORDING SHALL BE PRODUCED USING EQUIPMENT
24 AND PROCEDURES THAT ARE DESIGNED TO PREVENT ALTERATION OF THE
25 RECORDING'S AUDIO OR VISUAL RECORD.

26 (5) PURSUANT TO ANY REQUEST OF DISCOVERY, THE PROSECUTOR SHALL
27 PROVIDE A COPY OF THE RECORDED STATEMENT TO THE DEFENSE COUNSEL OF

Senate Bill No. 152 (H-3) as amended November 27, 2012

1 RECORD OR TO THE DEFENDANT IF HE OR SHE IS NOT REPRESENTED BY
2 DEFENSE COUNSEL. THE COURT SHALL NOT REQUIRE THE POLICE OR THE
3 PROSECUTOR TO PREPARE OR PAY FOR A TRANSCRIPT OF A RECORDED
4 STATEMENT. A COURT OR THE DEFENSE MAY HAVE A TRANSCRIPT PREPARED AT
5 ITS OWN EXPENSE.

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

9 SEC. 9. ANY FAILURE TO RECORD A STATEMENT [
10] AS REQUIRED UNDER SECTION 8 OF THIS CHAPTER [OR TO
PRESERVE A RECORDED STATEMENT] DOES
11 NOT PREVENT ANY LAW ENFORCEMENT OFFICIAL PRESENT DURING THE TAKING
12 OF THE STATEMENT FROM TESTIFYING IN COURT AS TO THE CIRCUMSTANCES
13 AND CONTENT OF THE INDIVIDUAL'S STATEMENT IF THE COURT DETERMINES
14 THAT THE STATEMENT IS OTHERWISE ADMISSIBLE. HOWEVER, UNLESS THE
15 INDIVIDUAL OBJECTED TO HAVING THE INTERROGATION RECORDED AND THAT
16 OBJECTION WAS PROPERLY DOCUMENTED UNDER SECTION 8(3), THE JURY
17 SHALL BE INSTRUCTED THAT IT IS THE LAW OF THIS STATE TO RECORD
18 STATEMENTS OF AN INDIVIDUAL IN CUSTODIAL DETENTION WHO IS UNDER
19 INTERROGATION FOR A MAJOR FELONY AND THAT THE JURY MAY CONSIDER THE
20 ABSENCE OF A RECORDING IN EVALUATING THE EVIDENCE RELATING TO THE
21 INDIVIDUAL'S STATEMENT.

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

1 SEC. 11. (1) THE COMMISSION ON LAW ENFORCEMENT STANDARDS
2 CREATED UNDER SECTION 3 OF THE COMMISSION ON LAW ENFORCEMENT
3 STANDARDS ACT, 1965 PA 203, MCL 28.603, SHALL SET QUALITY STANDARDS
4 FOR THE AUDIOVISUAL RECORDING OF STATEMENTS UNDER SECTION 8 OF THIS
5 CHAPTER AND STANDARDS FOR GEOGRAPHIC ACCESSIBILITY OF EQUIPMENT IN
6 THE STATE. THE COMMISSION SHALL ALSO CONDUCT AN ASSESSMENT OF THE
7 INITIAL COST NECESSARY FOR LAW ENFORCEMENT AGENCIES TO PURCHASE
8 AUDIOVISUAL RECORDING EQUIPMENT. THE FIRST ASSESSMENT SHALL BE
9 CONDUCTED WITHIN 120 DAYS AFTER THE EFFECTIVE DATE OF THE
10 AMENDATORY ACT THAT ADDED THIS SECTION. THE COMMISSION ON LAW
11 ENFORCEMENT STANDARDS SHALL CONDUCT SUBSEQUENT ASSESSMENTS
12 REGARDING THE NECESSARY COSTS OF PURCHASING, UPGRADING, OR
13 REPLACING THE EQUIPMENT EVERY 2 YEARS.

14 (2) THE COMMISSION ON LAW ENFORCEMENT STANDARDS SHALL
15 RECOMMEND TO THE LEGISLATURE EACH YEAR AN ANNUAL APPROPRIATION
16 AMOUNT TO BE DETERMINED BY THE COMMISSION'S ASSESSMENT PERFORMED
17 UNDER THIS SECTION. THE LEGISLATURE SHALL ANNUALLY APPROPRIATE
18 FUNDS TO THE COMMISSION ON LAW ENFORCEMENT STANDARDS FOR
19 DISTRIBUTION TO LAW ENFORCEMENT AGENCIES THROUGHOUT THE STATE TO
20 ALLOW THE AGENCIES TO PURCHASE AUDIOVISUAL RECORDING EQUIPMENT FOR
21 PURPOSES OF THIS CHAPTER. ANY FUNDS APPROPRIATED FOR THIS PURPOSE
22 SHALL BE IN ADDITION TO THE APPROPRIATIONS PROVIDED TO THE
23 COMMISSION ON LAW ENFORCEMENT STANDARDS AND THE DEPARTMENT OF STATE
24 POLICE IN THE IMMEDIATELY PRECEDING FISCAL YEAR AND SHALL NOT BE
25 APPROPRIATED FROM THE MICHIGAN JUSTICE TRAINING FUND CREATED IN
26 SECTION 5 OF 1982 PA 302, MCL 18.425, OR THE DEPARTMENT OF STATE
27 POLICE BUDGET.

(4) NOTWITHSTANDING SUBSECTION (3), A LAW ENFORCEMENT AGENCY SHALL COMPLY WITH THE PROVISIONS OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION WITHIN 60 DAYS AFTER THE DATE THE COMMISSION ADOPTS THE STANDARDS FOR AUDIOVISUAL RECORDING EQUIPMENT REQUIRED BY THIS SECTION IF THE LAW ENFORCEMENT AGENCY HAS AUDIOVISUAL RECORDING EQUIPMENT THAT COMPLIES WITH THOSE STANDARDS ON THAT DATE, OR WITHIN 60 DAYS AFTER THE DATE THE LAW ENFORCEMENT AGENCY SUBSEQUENTLY OBTAINS AUDIOVISUAL RECORDING EQUIPMENT THAT COMPLIES WITH THE ADOPTED STANDARDS.

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