

## CHAPTER 360

(House Bill 6)

AN ACT concerning

### **Criminal Procedure – Custodial Interrogation – ~~Electronic~~ Recordation**

FOR the purpose of establishing that it is the public policy of the State that ~~custodial interrogations of criminal suspects be recorded whenever practicable; requiring that an electronic recording be made of certain custodial interrogations except under certain circumstances; establishing that the State shall bear the burden of proving, by a preponderance of the evidence, that a certain exception to the requirement to record a custodial interrogation is applicable; requiring the State to file a certain notice under certain circumstances; requiring the notice to contain certain information; requiring the recording of the making and signing of a certain writing under certain circumstances; requiring a court to make a certain finding under certain circumstances; exempting recordings made in accordance with this Act~~ certain law enforcement units shall make certain efforts to create a certain audiovisual recording under certain circumstances and certain law enforcement units shall make certain efforts to create a certain audio recording under certain circumstances; exempting certain recordings from certain provisions of law; defining ~~certain terms~~ a certain term; providing that requiring the Governor's Office of Crime Control and Prevention shall to work with State and local law enforcement agencies to ensure that the State secures certain funding and, develop a program to assist the agencies in funding compliance with this Act; providing for the application of this Act; providing for a delayed effective date; the establishment of certain interrogation rooms, and monitor and report during certain meetings on the progress of jurisdictions and the Department of State Police in establishing certain interrogation rooms; and generally relating to custodial interrogations of certain individuals.

BY adding to

Article – Criminal Procedure

Section ~~2-401 and 2-402~~ through 2-404 to be under the new subtitle “Subtitle 4. Custodial Interrogation”

Annotated Code of Maryland

(2001 Volume and 2007 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

#### **Article – Criminal Procedure**

#### **SUBTITLE 4. CUSTODIAL INTERROGATION.**

**2-401.**

~~(A) (1) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(2) "CUSTODIAL~~ IN THIS SUBTITLE, "CUSTODIAL INTERROGATION" RETAINS ITS JUDICIALLY DETERMINED MEANING.

~~(3) "ELECTRONIC RECORDING" MEANS A VIDEOTAPE OR DIGITAL RECORDING THAT INCLUDES BOTH AUDIO AND VISUAL REPRESENTATIONS.~~

~~(4) (I) "PLACE OF DETENTION" MEANS A GOVERNMENTAL FACILITY UNDER THE CONTROL OF A LAW ENFORCEMENT UNIT AT WHICH A PERSON MAY BE DETAINED IN CONNECTION WITH CRIMINAL CHARGES AGAINST THE PERSON.~~

~~(II) "PLACE OF DETENTION" INCLUDES A POLICE STATION, STATE PRISON FACILITY, OR LOCAL PRISON FACILITY.~~

~~(B) IT IS THE PUBLIC POLICY OF THE STATE THAT CUSTODIAL INTERROGATIONS OF CRIMINAL SUSPECTS BE RECORDED WHENEVER PRACTICABLE.~~

~~(C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, AN ELECTRONIC RECORDING SHALL BE MADE OF A CUSTODIAL INTERROGATION CONDUCTED IN A PLACE OF DETENTION WHEN THE INTERROGATION IS IN CONNECTION WITH A MURDER, RAPE, SEXUAL OFFENSE IN THE FIRST DEGREE, OR SEXUAL OFFENSE IN THE SECOND DEGREE.~~

~~(D) (1) ELECTRONIC RECORDING OF A STATEMENT UNDER SUBSECTION (C) OF THIS SECTION IS NOT REQUIRED IF:~~

~~(I) THE STATEMENT IS MADE:~~

~~1. SPONTANEOUSLY OUTSIDE THE COURSE OF A CUSTODIAL INTERROGATION;~~

~~2. IN RESPONSE TO QUESTIONING THAT IS ROUTINELY CONDUCTED DURING THE PROCESSING OF AN ARREST; OR~~

~~3. AT A TIME WHEN THE PERSON BEING INTERROGATED IS NOT A SUSPECT FOR THE CRIME TO WHICH THE STATEMENT~~

~~RELATES WHILE THE PERSON IS BEING INTERROGATED FOR A CRIME OTHER THAN A CRIME SPECIFIED IN SUBSECTION (C) OF THIS SECTION; OR~~

~~(H) 1. THE CUSTODIAL INTERROGATION IS CONDUCTED OUT OF STATE;~~

~~2. THE CUSTODIAL INTERROGATION DURING WHICH A STATEMENT IS GIVEN OCCURS AT A TIME WHEN THE INTERROGATOR HAS NO KNOWLEDGE THAT THE PERSON BEING INTERROGATED MAY HAVE BEEN INVOLVED IN A CRIME FOR WHICH RECORDING IS REQUIRED; OR~~

~~3. THE INTERROGATOR IN GOOD FAITH FAILS TO MAKE AN ELECTRONIC RECORDING OF THE CUSTODIAL INTERROGATION BECAUSE:~~

~~A. THE RECORDING EQUIPMENT DOES NOT FUNCTION AND OTHER EQUIPMENT IS NOT READILY AVAILABLE;~~

~~B. THE INTERROGATOR INADVERTENTLY FAILS TO OPERATE THE EQUIPMENT PROPERLY; OR~~

~~C. THE EQUIPMENT MALFUNCTIONS OR STOPS OPERATING WITHOUT THE INTERROGATOR'S KNOWLEDGE.~~

~~(2) THE STATE SHALL BEAR THE BURDEN OF PROVING, BY A PREPONDERANCE OF THE EVIDENCE, THAT AN EXCEPTION LISTED IN PARAGRAPH (1) OF THIS SUBSECTION IS APPLICABLE.~~

~~(E) (1) IF THE STATE INTENDS TO RELY ON AN EXCEPTION SET FORTH IN SUBSECTION (D) OF THIS SECTION IN OFFERING A DEFENDANT'S UNRECORDED STATEMENT INTO EVIDENCE, THE STATE SHALL FILE, WITHOUT REQUEST UNDER THE MARYLAND RULES, A NOTICE OF INTENT TO RELY ON THE UNRECORDED STATEMENT AS PART OF THE STATE'S REQUIRED DISCOVERY.~~

~~(2) A NOTICE FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL CONTAIN:~~

~~(I) THE SPECIFIC EXCEPTION ON WHICH THE STATE INTENDS TO RELY;~~

~~(II) THE SPECIFIC PLACE AND TIME AT WHICH THE DEFENDANT MADE THE STATEMENT; AND~~

~~(HH) THE NAMES AND ADDRESSES OF THE WITNESSES ON WHOM THE STATE INTENDS TO RELY TO ESTABLISH THE EXCEPTION.~~

~~(F) IF A DEFENDANT ELECTS TO MAKE OR SIGN A WRITTEN STATEMENT DURING THE COURSE OF A CUSTODIAL INTERROGATION, THE MAKING AND SIGNING OF THE WRITING SHALL BE RECORDED IN ACCORDANCE WITH THIS SECTION UNLESS AN EXCEPTION SET FORTH IN SUBSECTION (D) OF THIS SECTION APPLIES.~~

~~(G) IF, AFTER A HEARING ON THE ISSUE, THE COURT DETERMINES THAT A STATEMENT WAS MADE BUT WAS NOT RECORDED IN VIOLATION OF THIS SECTION, AND NO EXCEPTION TO THE RECORDING REQUIREMENT APPLIES, THE COURT SHALL FIND THAT THE STATEMENT IS INADMISSIBLE.~~

2-402.

IT IS THE PUBLIC POLICY OF THE STATE THAT:

(1) A LAW ENFORCEMENT UNIT THAT REGULARLY UTILIZES ONE OR MORE INTERROGATION ROOMS CAPABLE OF CREATING AUDIOVISUAL RECORDINGS OF CUSTODIAL INTERROGATIONS SHALL MAKE REASONABLE EFFORTS TO CREATE AN AUDIOVISUAL RECORDING OF A CUSTODIAL INTERROGATION OF A CRIMINAL SUSPECT IN CONNECTION WITH A CASE INVOLVING MURDER, RAPE, SEXUAL OFFENSE IN THE FIRST DEGREE, OR SEXUAL OFFENSE IN THE SECOND DEGREE, WHENEVER POSSIBLE; AND

(2) A LAW ENFORCEMENT UNIT THAT DOES NOT REGULARLY UTILIZE ONE OR MORE INTERROGATION ROOMS CAPABLE OF CREATING AUDIOVISUAL RECORDINGS OF CUSTODIAL INTERROGATIONS SHALL MAKE REASONABLE EFFORTS TO CREATE AN AUDIO RECORDING OF A CUSTODIAL INTERROGATION OF A CRIMINAL SUSPECT IN CONNECTION WITH A CASE INVOLVING MURDER, RAPE, SEXUAL OFFENSE IN THE FIRST DEGREE, OR SEXUAL OFFENSE IN THE SECOND DEGREE, WHENEVER POSSIBLE.

~~2-402.~~ 2-403.

~~RECORDINGS MADE IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBTITLE ARE~~ AN AUDIO OR AUDIOVISUAL RECORDING MADE BY A LAW ENFORCEMENT UNIT OF A CUSTODIAL INTERROGATION OF A CRIMINAL SUSPECT IS EXEMPT FROM THE MARYLAND WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.

2-404.

**ON OR BEFORE DECEMBER 31, 2009, AND ANNUALLY THEREAFTER, THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION SHALL REPORT TO THE HOUSE JUDICIARY COMMITTEE AND THE SENATE JUDICIAL PROCEEDINGS COMMITTEE, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE ON THE PROGRESS OF JURISDICTIONS AND THE DEPARTMENT OF STATE POLICE IN ESTABLISHING INTERROGATION ROOMS CAPABLE OF CREATING AUDIOVISUAL RECORDINGS OF CUSTODIAL INTERROGATIONS.**

SECTION 2. AND BE IT FURTHER ENACTED, That the Governor's Office of Crime Control and Prevention shall:

(1) work with State and local law enforcement agencies to ensure that Maryland secures all federal, State, and local funding available for law enforcement improvement; ~~and~~

(2) develop a program to assist State and local law enforcement agencies in funding ~~compliance with this subtitle, including funding for training and equipment.~~

~~SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any statement obtained from a defendant before the effective date of this Act.~~ the establishment and operation of interrogation rooms capable of creating audiovisual recordings of custodial interrogations; and

(3) monitor and report during StateStat meetings on the progress of jurisdictions and the Department of State Police in establishing interrogation rooms capable of creating audiovisual recordings of custodial interrogations.

SECTION ~~4~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, ~~2010~~ 2008.

**Approved by the Governor, May 13, 2008.**