

Legislative Analysis



ELECTRONIC INTERROGATION FOR MAJOR FELONY SUSPECTS

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House Bill 4909

Sponsor: Rep. Steve Tobocman

Committee: Judiciary

Complete to 4-29-08

A SUMMARY OF HOUSE BILL 4909 AS INTRODUCED 6-12-07

The bill would add a new provision to Chapter III ("Rights of the Accused") of the Code of Criminal Procedure. The bill would prohibit a law enforcement official from questioning a suspect in a major felony who was in police custody regarding his or her involvement in the commission of the crime unless the entire questioning session was electronically recorded. The in-custody electronic recording could be made either with or without the knowledge or consent of the individual being questioned.

Failure to record the session would be grounds for a defendant to challenge the admissibility of evidence obtained in a questioning session that was not recorded as required above; at any time before the date of trial, the defendant would have to give 48 hours' notice to the prosecution of his or her intent to seek exclusion of that evidence.

A statement obtained in violation of the bill's requirement for electronic recording—or evidence obtained as a result of that statement—would have to be excluded as evidence in a criminal proceeding absent a showing of good cause by the party seeking to introduce the evidence for failing to record the session.

The electronic recordings would have to be preserved until such time as the defendant's conviction for any offense relating to the statement was final and all direct and habeas corpus appeals were exhausted, or the prosecution of that offense was barred by law.

"Major felony" would mean a felony punishable by imprisonment for life, by imprisonment for life or any term of years, or by imprisonment for at least 20 years. "Electronically recorded" would mean recorded by use of a motion picture, audiotape, videotape, digital recording, or other similar technology.

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

- Peace officer (which would be defined to mean a state or local police officer, county sheriff or his or her deputy, public safety officer of a college or university, and a conservation officer of the departments of Natural Resources and Environmental Quality).
- The attorney general or a county prosecuting attorney (or their assistants), or an attorney representing a political subdivision of this state or his or her assistant.

- A person acting upon the direction of an individual described above.

MCL 763.7

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on state and local government.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.