

MAINE STATE LEGISLATURE

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CRIMINAL JUSTICE AND PUBLIC SAFETY

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STATE OF MAINE
SENATE
121ST LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 286, L.D. 891, Bill, "An Act To Require the Videotaping of Police Interrogations"

Amend the bill by striking out the title and substituting the following:

'An Act To Require Recording of Certain Custodial Interrogations'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 15 MRSA §801-A is enacted to read:

§801-A. Recording of custodial interrogations of murder and gross sexual assault suspects

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Custodial interrogation" means an interrogation in which:

(1) A reasonable person would consider that person to be in custody in view of the circumstances; and

(2) The person is asked a question that is likely to elicit an incriminating response.

B. "Electronic recording" includes videotape, audiotape, motion picture and digital recording.

COMMITTEE AMENDMENT

2 C. "Place of detention" means a building owned or operated
3 by a law enforcement agency at which persons may be held in
4 detention in connection with criminal charges. "Place of
5 detention" includes a police station.

6 2. Certain statements inadmissible. A statement made by a
7 person accused of murder or felony murder as defined in Title
8 17-A, sections 201 and 202 or gross sexual assault as defined in
9 Title 17-A, section 253 is inadmissible in court if the statement
10 was made as a result of a custodial interrogation that was
11 conducted at a place of detention unless:

12 A. The statement is an electronic recording and is
13 presented in a substantially accurate and unaltered manner;
14 or

15 B. The person seeking to have the statement admitted
16 demonstrates by a preponderance of evidence that the
17 statement is reliable.

18 The requirements for admissibility of a statement established in
19 this subsection are in addition to any showing of voluntariness
20 required prior to admission of that statement in court.

21 3. Exemptions. An unrecorded statement is not subject to
22 subsection 2 if:

23 A. The statement is used for impeachment purposes only;

24 B. Recording the statement was not feasible, including, but
25 not limited to, cases in which electronic recording
26 equipment is malfunctioning;

27 C. The statement was made in open court, such as at a court
28 proceeding, grand jury proceeding or preliminary hearing;

29 D. The statement was made spontaneously, not in response to
30 a question; or

31 E. The custodial interrogation took place outside the State.

32 4. Confidentiality of recorded statement. An electronic
33 recording made pursuant to this section is confidential and is
34 not a public record as defined in Title 1, section 402,
35 subsection 3.

36 5. Surplus electronic recording equipment. A law
37 enforcement agency may purchase surplus electronic recording
38 equipment from the Department of Administrative and Financial
39 Services, Bureau of General Services to be used for recording
40 equipment.

statements pursuant to this section. The Bureau of General Services may charge a law enforcement agency only reasonable administrative and handling costs of no more than \$35 per item for the purchase of surplus electronic recording equipment under this subsection.

6. Grants authorized. The Department of Public Safety is authorized to make grants to law enforcement agencies within the State for training and equipment to be used in furtherance of this section.

7. Rulemaking. The department shall adopt routine technical rules, pursuant to Title 5, chapter 375, subchapter 2-A, to establish a mandate payment distribution schedule pertaining to the purchase of audio recording equipment by local law enforcement agencies pursuant to Title 30-A, section 5685.

Sec. 2. Appropriations and allocations. The following appropriations and allocations are made.

PUBLIC SAFETY, DEPARTMENT OF

State Police

Initiative: Appropriates funds on a one-time basis for the purpose of purchasing audio recorders to be used in police cruisers for certain interrogations.

General Fund	2003-04	2004-05
All Other	\$0	\$1,000
General Fund Total	\$0	\$1,000'

SUMMARY

This amendment, which is the majority report of the committee and is based upon similar legislation in other jurisdictions, replaces the bill. The amendment makes a statement inadmissible if the statement was made as a result of custodial interrogation that was conducted at a police station or other place of detention, unless the statement was recorded electronically and is presented in a substantially accurate and unaltered manner, or the person seeking to have the statement admitted demonstrates by a preponderance of evidence that the statement is reliable, in addition to any demonstration of voluntariness required by law. This requirement applies to interrogations of persons accused of murder or gross sexual assault.

COMMITTEE AMENDMENT "A" to S.P. 286, L.D. 891

2 The amendment defines certain terms. "Custodial
interrogation" means an interrogation during which a reasonable
4 person would consider himself or herself to be in custody and a
question is asked that is likely to elicit an incriminating
6 response. "Electronic recording" includes videotape, audiotape,
motion picture and digital recording. "Place of detention" means
8 a building owned or operated by a law enforcement agency at which
persons may be held in detention in connection with criminal
charges.

10
12 The amendment exempts certain statements from the recording
requirement. Specifically, it allows use of unrecorded
14 statements for impeachment purposes; if recording was not
feasible; if the statement was made in open court, such as at a
16 court proceeding, grand jury proceeding or preliminary hearing;
if the statement was made spontaneously and not in response to a
18 question; or if the custodial interrogation takes place out of
the State.

20 Additionally, the amendment makes a recorded statement
confidential and exempt from public inspection as a public
22 record; allows law enforcement agencies to purchase recording
equipment from the Department of Administrative and Financial
24 Services, Bureau of General Services for nominal cost; and
authorizes the Department of Public Safety to make grants to law
26 enforcement agencies for training and equipment.

28
30 **FISCAL NOTE REQUIRED**
(See attached)



**121st Maine Legislature
Office of Fiscal and Program Review**

LD 891

An Act to Require the Videotaping of Police Interrogations

LR 0575(02)

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Criminal Justice

Fiscal Note Required: Yes

Fiscal Note

Current Cost - State Mandate

	2003-04	2004-05	Projections 2005-06	Projecti 2006
Net Cost (Savings)				
General Fund	\$0	\$1,000	\$0	
Appropriations/Allocations				
General Fund	\$0	\$1,000	\$0	

State Mandate

New or Expanded Activity

The requirement that local law enforcement agencies must record certain police interrogations constitutes an unfunded state mandate. The costs may be mitigated by any surplus state equipment available at a reduced cost. The final costs are estimated to be not more than \$1,000; a General Fund appropriation for that purpose has been included.

Unit Affected

Municipality
County

Costs

Insignifica

Fiscal Detail and Notes

Assuming the purchase of surplus recording equipment by law enforcement agencies will be minor, the additional administrative and handling costs can be absorbed by the Bureau of General Services utilizing existing budgeted resources. However, if this activity were to become excessive, future General Fund appropriations could be required for the Bureau of General Services in addition to the one provided for the Department of Public Safety.