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## FISCAL IMPACT REPORT

SPONSOR:     Martinez                        DATE TYPED:     03/03/03     HB     549/aHCPAC    

SHORT TITLE:     Custodial Interrogation Recordings     SB                                     

ANALYST:     Fox-Young    

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 Significant	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Responses Received From

- Attorney General (AG)
- Department of Public Safety (DPS)
- Corrections Department (CD)
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)

No Response

- Public Defender Department (PDD)

### SUMMARY

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee Amendment makes a technical adjustment to the bill. On page 3, line 3, the amendment strikes “D” and inserts “E,” correcting the reference to the definition of “custodial interrogation.”

Synopsis of Original Bill

House Bill 549 amends the Criminal Procedure Act, adding a new section regarding electronic recordings of custodial interrogations.

The bill provides that law enforcement officers shall electronically record custodial interroga-

tions, that defendants be advised interrogations are being electronically recorded, that Miranda warnings be given to defendants before any interrogation is performed, and that warnings and waivers of constitutional rights be electronically recorded.

The bill provides that a law enforcement officer is exempt from electronically recording a custodial interrogation if he can establish by clear and convincing evidence that a defendant's statements were voluntary and intelligently made after the defendant had been read his Miranda warnings and that the officer had good cause not to record the interrogation.

"Custodial interrogation" means an interrogation conducted in a police station, police car, courthouse, correctional facility, community correctional center, detention facility or any other structured environment where adequate recording equipment is readily available.

"Electronic recording" means a complete and authentic electronic recording created by motion picture, videotape, audiotape or digital media.

### Significant Issues

The Attorney General (AG) notes that the definition of custodial interrogation contained in the bill conflicts with the constitutionally established requirements of a custodial interrogation. In *Miranda v. Arizona*, the U.S. Supreme Court stated that "...by custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Based on a well-established body of case law that defines "custody" and "custodial interrogation," AG reports that custodial interrogation is an interrogation of a person who **is in police custody**, and an officer conducting such an investigation is required to advise the person of his rights to remain silent and to be represented by counsel. As defined in the bill, custodial interrogation means an interrogation conducted in **"a structured environment."**

The Department of Public Safety (DPS) notes that custodial interrogation includes any words or actions that an officer should know are reasonably likely to elicit an incriminating response from the suspect. (*Rhode Island v. Innis*, 446 U.S. 291 (1980))

The Department of Public Safety (DPS) notes that it has already implemented a policy requiring uniformed officers to carry tape recorders while on duty and that the majority of the patrol cars in the state police division are equipped with mobile video recording equipment. DPS further notes that the criminal investigations division records the majority of custodial interrogations.

AG notes that the bill does not include provisions detailing the consequences for cases in which electronic recording procedures are breached; however, an implied consequence is the exclusion of defendants' statements.

### **FISCAL IMPLICATIONS**

The Administrative Office of the District Attorneys (AODA) notes that the bill will likely cause a significant increase in suppression hearings, also requiring a commitment of attorney time to review tapes in every case. Additional resources for courts, district attorneys and public defend

ers will likely be needed to address workload increases. Additionally, judicial agencies will require funding to acquire equipment (with play-back and duplicating capabilities) that is compatible with each type of media used by law enforcement.

This bill is likely generate increased litigation, in the form of criminal trials and appeals, regarding the authority of the legislature to establish a rule of evidence, the effects of the bill on a defendant's constitutional rights, and questions regarding the procedures employed in particular cases. AG reports that its criminal appeals division will likely see an increase in cases as a result of the bill.

### **TECHNICAL ISSUES**

AODA notes that the bill makes no provisions regarding the storage of tapes.

In subsection B (2) (a), reference is made to the definition of a custodial interrogation in paragraph one of Subsection D. The reference should be to paragraph one of Subsection E.

**JCF/njw**